PUBLIC LAW BOARD NO. 6205
AWARD NO. 14
CASE NO. 14

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

PARTIES
TO DISPUTE: and

UNION PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier assigned outside forces (Rick Franklin Company) to dig trenches, load a Company hi-rail dump truck and install drainage pipe next to and under the tracks in the Van Asselt Yard in Seattle, Washington on the Oregon Division beginning February 1 through 28, 1993 (System File H-51/930464).

(2) The Agreement was further violated when the Carrier failed to notify/confer with the General Chairman as required by Rule 52.

(3) As a consequence of the violations referred to in Parts (1) and/or (2) above, furloughed First Class B&B Carpenters W. D. Huffman, D. Coronado and furloughed Class 2 Roadway Equipment Operator M. D. Bundrock shall each be allowed an equal proportionate share of the five hundred thirty-six (536) man-hours expended by the outside forces performing the above-described work at their respective straight time rates of pay."

FINDINGS:

Upon the whole record, after hearing, this Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

By notice dated July 24, 1992, Carrier advised the Organization of its intent to solicit bids to cover "the rehabilitation of the Van Asselt Yard in Seattle, Washington, which include (sic) installing asphalt roadways, grading, removal of retired facilities and chain link fence rearrangement and construction." In its notice Carrier asserted its availability to conference the notice within the next 15 days. By letter dated July 27, 1992, the Organization objected to Carrier's intent to contract the work, relying upon Rules 1 and 8 as reserving the work to employees and referencing prior employee written statements furnished to Carrier in another specified file establishing the fact that employees have customarily performed this type of work and are skilled at doing so. The Organization requested the scheduling of a conference prior to the work being performed.

Carrier responded on August 14, 1992, noting that it had a practice of contracting out major construction projects such as yard rehabilitation, and indicated a willingness to meet, suggesting that the matter be set on the agenda for the next conference on contracting notices. The Organization contends it did not receive such response. Apparently, Carrier provided the Organization with a copy during the claims processing. The matter was not conferenced until March 11, 1993, wherein Carrier explained that the work

conferenced until March 11, 1993, wherein Carrier explained that the work in issue had already been performed. The Organization contends that the contract was awarded on August 31, 1992; Carrier asserts that the project involved did not commence until February 1, 1993.

In its claim filed on March 25, 1993, the Organization argues that the work in question is specifically reserved to employees by Rules 1 and 8 of the Agreement, and has customarily and historically been performed by them, submitting employee statements supporting this contention. In its correspondence on the property, the Organization avers that the magnitude of the project was not beyond the capabilities of its employees, takes issue with Carrier's evidence of past practice, and argues that a full monetary remedy is appropriate for loss of work opportunity regardless of whether Claimants were fully employed.

Carrier argued throughout the claims processing that the Scope rule was general in nature and did not specifically reserve this type of work to employees under the Agreement. Carrier contends that the claim involves only grading and culvert work which was just a small part of a project of such magnitude that it was beyond the capabilities of available forces to complete in a timely fashion, and asserts that the Board has held that it is not required to piecemeal such work, relying on Third Division Awards 31525, 30633, 29187, 12825. It presented evidence of a past practice of contracting large rehabilitation projects and similar type grading and culvert work and relies on prior precedent establishing its right to contract out this work under the "prior existing rights" language in Rule 52(b). See Third Division Awards 29309, 30210. Carrier also argues that the claim is excessive since the Organization failed to show that Claimants suffered any loss as a result of the contracting. Finally, Carrier asserts that it fulfilled its

notice and conference obligations under Rule 52, and that any delay in scheduling a conference was the fault of the Organization.

Initially we find that Carrier satisfied its Rule 52(a) obligations in this case. There is no contention that the grading and culvert installation work involved in this claim was not part of the project covered by the July 24, 1992 notice. The record reflects that, in accord with the practice of the parties, the Organization filed a lengthy objection on July 27, 1992 requesting a conference, and Carrier responded on August 14, 1992 that it was willing to meet and suggested that the matter be placed on the agenda at the next conference on contracting notices. The Organization did not do so. Even if it had not received Carrier's response as it contends, it was incumbent on the Organization to pursue the matter, either seeking a response or again requesting a date for conference. This is especially true if, as the Organization asserts, the contract was awarded on August 31, 1991 and work began on the overall rehabilitation of the Van Asselt Yard at that time. Instead, over 6 months went by with no action by the Organization to schedule the matter for discussion. Under such circumstances, we find that the delay in scheduling the conference until after the disputed work was completed was attributable to the Organization, not Carrier, who twice expressed its willingness to meet before the project was contracted. Thus, as the notice was served over 15 days prior to the contracting and Carrier gave the Organization sufficient opportunity to schedule a conference prior to the commencement of the work, we find that Carrier did not violate its obligations under Rule 52(a) herein. See, Third Division Awards 31035, 30287.

As established on the property, the work in issue was part of the overall project of rehabilitation of the Van Asselt Yard of which the

Organization was notified. Carrier presented evidence establishing a past practice of contracting large projects of this nature, and pointed out to the Organization that an undertaking of this magnitude was beyond the capabilities of its forces to complete in a timely fashion. The Board has held on numerous occasions that the work contracted must be considered as a whole and that Carrier is not required to piecemeal the work in order to give employees a small portion of it. See Third Division Awards 30633, 31526, 29187, 26850, 12825. Accordingly, we find no violation of Rule 52 in Carrier's disputed contracting in this case.

AWARD:

The claim is denied.

Margo R. Newman
Margo R. Newman
Neutral Chairperson

D. A. Ring
Dominic A. Ring
Carrier Member

Dated:_____

R. B. Wehrli
Rick B. Wehrli
Employe Member

Dated: 7-5-00