PUBLIC LAW BOARD NO. 6205
AWARD NO. 17
CASE NO. 17

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 (Shurigar Construction Company) to fill, build a berm and roadbed and grade the roadbed and roadway at South Gibbon, Nebraska beginning April 12, 1993 and continuing (System File H-59/930597).

(2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with a proper advance notice of its intention to contract out said work and make a good-faith attempt to reach an understanding concerning said contracting as required by Rule 52.

(3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Eastern District Roadway Equipment Operators C. C. Martin, C. N. Tarman and R. D. Creek shall each be allowed pay at their respective straight time and overtime rates for an equal proportionate share of the total number of man-hours expended by the outside forces beginning April 12, 1993 and continuing until the violation ceases to exist."

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 November 4, 1992, Carrier advised the Organization of its intent to solicit bids to cover "extension of siding at South Gibbon, Nebraska, including grading, topsoil stockpiling and placement, subballast, culvert extension, seeding, right-of-way fence, drilling and abandonment of wells." In its notice Carrier asserted its availability to conference the notice within the next 15 days. By letter dated November 9, 1992, the Organization objected to Carrier's intent to contract the work, relying upon Rules 1, 8 and 10 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 November 16, 1992, noting that it had a practice of contracting out this type of work, and indicated a willingness to meet, suggesting that the matter be set on the agenda for the next conference on contracting notices. A conference was held on November 24, 1992 without resolution.

In its claim filed on July 1, 1993, the Organization argues that the work in question is specifically reserved to employees by Rules 1, 8 and 10

of the Agreement, and has customarily and historically been performed by them. In its correspondence on the property, the Organization presents a statement from each of the Claimants indicating that they are skilled at operating the equipment used by contractor and that they could safely perform the grading work at issue. It also submits evidence concerning the availability of renting the equipment from two sources without operators, 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 presented evidence of an extensive past practice of contracting major projects including building berms and grading roadbeds and relies on prior precedent establishing its right to contract out this type of work under the "prior existing rights" language in Rule 52(b). See, e.g. PLB No. 5546, Cases 3 and 6. Carrier also argues that it is not required to piecemeal a major project, and 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.

Initially we find that Carrier satisfied its notice and conference obligations in this case. Notice was served on November 4, 1992 and conference held on November 24, 1992. The work in issue did not commence until April 12, 1993. Thus, as the notice was served over 15 days prior to the contracting and the conference was held over four months before the disputed work began, we find that Carrier did not violate its obligations under Rule 52(a) herein.

The ability of Carrier to contract out the work of building berms and grading roadbeds on this property has been upheld in Third Division Awards 32629, 32310, 31721, 31288, 31286, 31281, 30671, 30210, 30193, 29577, 29309, 29308, 28622, 28619, 27020, 27011, 27010; PLB No. 5546, Awards 3, 6 and 17. Given the practice established on this property for the kind of contracting involved in this case, there is no basis for determining that these Awards are palpably erroneous, and in the interest of stability, we shall follow their holdings. Based upon the evidence of past practice established in this record, as well as this prior precedent, we find that the "prior and existing rights and practices" language in Rule 52(b) permits the contracting involved herein.

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