PUBLIC LAW BOARD NO. 6205
AWARD NO. 4
CASE NO. 4

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 (Jackman Construction Company) to perform Maintenance of Way work (unloading track panels) in the vicinity of Mile Post 830 near Bryan, Wyoming on November 11 through 20, 1991 (System File S-640/920209).

(2) The Agreement was further violated when the Carrier failed to timely furnish the General Chairman with proper advance written notice of its intention to contract out said work as contemplated by Rule 52 (a).

(3) As a consequence of the violation referred to in Parts (1) and/or (2) above, furloughed Eastern District Roadway Equipment Operator D. L. Squibb shall be allowed sixty-four (64) hours' pay at the Group 19 REO's straight time rate and two (2) hours' pay at the Group 19 REO's time and one-half rate."

FINDINGS:

Upon the whole record, after hearing, this Board finds that the

PLB NO-6205
AWD NO-4

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 August 27, 1991, Carrier advised the Organization of its intent to solicit bids "to cover grading and embankment work, subballasting, extension of masonry arch, removal of right-of-way fence, installation of new right-of-way fence and any other incidental work in connection with the construction of a siding at M.P. 830 on the Company's Salt Lake Subdivision, near Bryan, Wyoming." By letter dated September 10, 1991 the Organization objected to Carrier contracting grading and fencing type work historically performed by employees and preserved to them by Rules 1, 8 and 10 of the Agreement. It noted that Carrier did not rely on any of the five listed exceptions contained in Rule 52(a) to support its need to contract the work and requested the holding of a conference prior to the work being performed and the discussion of specific concerns therein. A conference was held on October 21, 1991 without resolution.

This claim covers the period from November 11 to 20, 1991 when Carrier utilized a crawler backhoe with operator obtained from a contractor to unload track panels rather than utilizing Claimant and Carrier's own equipment.

Carrier's initial response dated February 20, 1992 sets forth specifically the reasons why Carrier rented this piece of equipment with an operator. It notes that on the Green River Service Unit, there are only three cranes able to perform the task in issue which are all operated by employees. Carrier states that two of the cranes were being utilized at

Walcott, Wyoming, quite a distance away, renewing a bridge structure and the other crane was working with a division extra gang near Rhone Poulenc soda ash plant. Carrier asserts that, even if it used its own equipment, Claimant would not have operated it since each crane has its own assigned operator.

The correspondence on the property reveals that the Organization agreed to Carrier's recitation of the facts concerning the location of its own equipment, but noted that this was not an emergency situation and, in any event, Carrier could have rented the equipment without an operator. It points to the fact that a crawler backhoe is Class II equipment listed in the Agreement. The Organization avers that the notice served did not cover the specific work of unloading track panels.

Carrier asserts that the unloading of track panels was only a small part of the overall project of constructing a siding, and avers that it need not piecemeal such work. Carrier contends that its notice and conference requirements were met in this case over a month before the actual contracting took place. It notes that the option of moving its own equipment from its current location would have caused it to furlough the gangs from which the crane was being moved, and its failure to lease this piece of equipment would have required it to furlough the gang working on installing the track panels. Carrier states that the work of unloading the panels was contracted in order to keep its own employees who were performing the actual installation of the track panels working. Carrier submitted documentation concerning its past practice of renting all types of equipment.

This case raises the issue of the adequacy of the notice served by

Carrier. The Organization asserts that the notice was not sufficiently specific so that the parties could enter good faith discussions concerning Carrier's right and need for renting the crawler backhoe to unload track panels, and the Organization had no way of knowing the broad notice encompassed this type of work. The Board discusses this issue in Third Division Award 30185, finding that Carrier need not specify in a notice all of the details of the work being contracted but must give sufficient information to permit the Organization an adequate opportunity to evaluate the proposed contracting and to allow productive discussion, wherein more details can be gathered, if necessary.

The instant notice encompassed grading and fencing and other work incidental to the construction of the noted siding. However, the record reveals that the actual installation of the track panels was being performed by employees, and was not intended to be encompassed within the notice. It is fair to say that the unloading of track panels may well be considered incidental to their installation, but is not obviously incidental to the grading and fencing work specified. Carrier did not dispute the Organization's claim on the property that the rental of the backhoe equipment with operator was not mentioned at the conference held on this notice. We are unable to say that the Organization should have known to raise this aspect of the project at that time based upon the wording of the notice and the actual work assignments made.

Carrier was forthright in its correspondence about the reason for its decision to contract this work and the Organization agreed with its assessment of the location and use of its cranes. However prudent its decision not to move its cranes at this time might have been, the fact remains that Carrier chose to rent both the backhoe equipment it deemed

necessary as well as an operator to achieve the track panel unloading. It presented evidence of its past practice of using rental equipment. The Organization does not take issue with Carrier's right to lease needed equipment, but only with the fact that it removed the work opportunity from one of its employees by using one of contractor's, noting that the Agreement is for work, not equipment, citing Third Division Awards 28486, 20372.

Awards emanating from this property have sustained claims based upon contracting the work of unloading crossties. See Third Division Awards, 31041, 31038, 31025, 28590. Carrier defended its right to contract in this case by the lack of available equipment. It did not claim, nor prove, that specialized equipment or skills were required or that this was an emergency situation.

A careful review of the record reveals that the subject matter of the rental of a crawler backhoe and its operation to unload track panels (clearly equipment and work performed by employees under the Agreement), or the use of Carrier's own cranes capable of performing the work, was the type of topic which could easily have been discussed in conference, permitting the Organization the opportunity to suggest alternatives to the contracting which occurred. The fact that the Organization was never made aware that a contractor was going to be used to do this unloading prior to the actual work undermined the purpose underlying the good faith meeting requirements of Rule 52(a). Under such circumstances, and the specific facts present in this case, we find that Carrier violated the notice provisions contained in Rule 52(a) with respect to the work in dispute.

However, as Carrier has established that Claimant was fully employed on the claim dates, and therefore would not have been available to operate the equipment if leased without an operator, and the notice herein was given in August, 1991, prior to the Board's admonition to Carrier concerning potential monetary damages for future notice violations, see Third Division Awards 29825, 29792, we do not deem a monetary remedy to be appropriate.

AWARD:

The claim is sustained in accordance with the Findings.

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