PUBLIC LAW BOARD NO. 6205
AWARD NO. 9
CASE NO. 9

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 (ALCO Fence of Cheyenne, Wyoming) to perform Bridge and Building Subdepartment work (removing old fence and installing new chain link fence) at the security area on the southeast corner of the Cheyenne, Wyoming Yards on October 6, 7, 8, 9 and 10, 1992 (System File H-3/930095).

(2) The Agreement was further violated when the Carrier's advance written notice of its intention to contract out said work was improper and when it failed to make a good-faith effort to reduce the incidence of contracting out scope covered work and increase the use of their Maintenance of Way forces as required by Rule 52(a) and the December 11, 1981 Letter of Understanding.

(3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Wyoming Division B&B Carpenters R. L. Kinkade and C. M. Tipsword shall each be allowed pay at the carpenter's straight time and overtime rate for an equal proportionate share of all straight time and overtime man-hours worked by the outside contractor's forces on the above-mentioned dates."

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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 June 22, 1992, Carrier advised the Organization of its intent to solicit bids "to cover the expansion of chain link fence compound at the Cheyenne, Wyoming Yard." It alleged that special equipment would be required to perform this work, and noted that two named individuals would be available to conference the notice within the next 15 days. By letter dated June 26, 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 also requested additional information concerning the special equipment required, and requested a conference prior to the work being performed. Carrier responded on June 30, 1992, and a conference was held on July 6, 1992 without resolution.

In its claim filed on October 28, 1992, the Organization asserts that the work in question is specifically reserved to employees by Rules 1, 8, 9 13 and 16 of the Agreement, and has customarily and historically been performed by them. In its correspondence on the property, the Organization took issue with the type of past practice evidence introduced

by Carrier, and, although admitting that notice was served on June 22, 1992, argued that Carrier failed to meet its good faith conference obligations. It asserts that a full monetary remedy is appropriate for loss of work opportunity regardless of whether Claimants were fully employed.

Carrier argued throughout that the Scope rule was general in nature and did not specifically reserve this type of work to employees under the Agreement. It contends that it has established a well-known and documented past practice of contracting similar type of work, and relies upon the "prior existing rights" language in Rule 52(b) as well as prior precedent on the property to justify its contracting, citing Third Division Awards 29393, 28558, 28789. Carrier contends that the claim is excessive, and argues that Claimants' suffered no loss as a result of the contracting since Claimant Kinkade was fully employed and Claimant Tipsword was on vacation during the entire claim period. Finally, Carrier asserts that it fulfilled its notice and conference obligations under Rule 52 prior to contracting the work in issue.

The Board initially finds that the notice given covers the work in dispute and was served with sufficient time for a conference to be held in advance of the actual contracting of the work. In fact, the conference was held on July 6, 1992 and the work did not begin until October 6, 1992, three months later. On the basis of this record, we find that the allegation that Carrier did not meet its notice obligation and good faith responsibilities under Article 52 is without merit.

The decisions concerning Carrier's ability to contract out various types of work on this property are abundant, and Carrier relies specifically on Third Division Awards 31649, 31227, 31034, 30210, 30202, 30201,

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30167, 30163, 30008, 30007, 30004, 29916, 28789, 23892, 32860, 32350, 30469, 30221, 30219, 30165, 29393 in arguing that it has established a past practice of contracting work involving chain link and regular fencing.

The Board has carefully reviewed the record in this case, as well as all cited contracting cases on the property dealing with similar type of work. Given the practice established on the property for contracting out fence construction work, there is no basis for determining that these Awards are palpably erroneous, and, in the interests of stability, we shall follow their holdings. We find that Carrier has established the existence of a mixed practice on this property with respect to the work in question. Thus, the "prior and existing rights and practices" language of Rule 52(b) permits the contracting even in the absence of any of the listed exceptions contained in Rule 52(a). See Third Division Award 30869. Accordingly, no violation of Rule 52 can be found, and the claim must be denied.

AWARD:

The claim is denied.

Margo R. Newman
Neutral Chairperson

Dominic A. Ring
Carrier Member

Dated:

Rick B. Wehrli
Employe Member

Dated: 7-5-00