

PUBLIC LAW BOARD NO. 6218

PARTIES) **BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**
TO)
DISPUTE) **UNION PACIFIC RAILROAD COMPANY (FORMER MISSOURI**
 PACIFIC RAILROAD COMPANY)

STATEMENT OF CLAIM

Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier assigned an outside contractor (Kershaw) to perform Maintenance of Way work (track undercutting and the maintenance of the machine used) on the Monroe Division in the vicinity of Pine Bluff, Arkansas beginning June 1, 1993 and continuing (Carrier's Files 930685 and 930686 MPR).

2. The Carrier also violated Article IV of the May 17, 1968 National Agreement when it failed to furnish the General Chairman with proper advance written notice of its intention to contract out the work in question.

3. As a consequence of the violations referred to in Parts (1) and/or (2) above, Machine Operator H. Carroll and Work Equipment Mechanic V. L. Price shall each be compen-

sated for all wage loss suffered, at their respective overtime rates of pay, from June 1, 1993 and continuing until the violation ceased.

OPINION OF BOARD

Claims were filed alleging that without notice to the Organization, the Carrier used contractor forces who utilized a Kershaw Track Undercutter to perform track undercutting and machine maintenance on the Monroe Division in the vicinity of Pine Bluff Arkansas beginning June 1, 1993.

For reasons discussed in *Awards 1 and 2* of this Board, the Carrier's exclusivity arguments are rejected.

The Organization's argument that notice was not given by the Carrier is not persuasive. By letter dated May 12, 1992, the Carrier wrote the Organization:

This is to advise of the Carrier's intent to solicit bids to cover the furnishing of one (1) Model 42-101 Kershaw Switch Undercutter, to assist Railroad forces installing ballast

on the Fort Worth Subdivision and other locations.

This is the type of work that has customarily and traditionally been performed by outside contractor's forces. The Carrier has neither the skilled manpower nor the proper equipment to safely and competently undertake and complete this project in a timely manner.

* * *

While perhaps subject to debate concerning the timing and scope of the notice, we cannot definitively say the notice provided by the Carrier failed to meet its obligations under Article IV. The Carrier's May 12, 1992 notice refers to its intent to use a contractor "... on the Fort Worth Subdivision *and other locations*" [emphasis added]. "[O]ther locations" can be read to include the area where the work was performed in this case. The fact that the work was not performed until June 1, 1993 does not, by itself, violate any specific notice requirements or make the notice untimely. The bottom line is that we are not satisfied that the Carrier's notice did not cover the work and the location in dispute. No notice violation has been shown.

With respect to the merits, and giving the Organization the benefit of the doubt, at best, the evidence amounts to disputed factual showings over whether the Carrier had

the necessary equipment for this project as the Organization contends or if the Carrier had to utilize the contractor's services in order to obtain specialized equipment needed for the work as the Carrier contends. Given that kind of dispute, the Organization's burden has not been carried.

The claims shall be denied.

AWARD

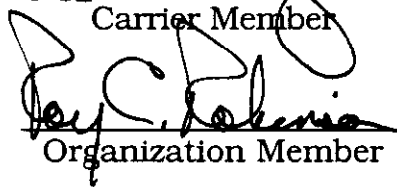
Claims denied.



Edwin H. Benn
Neutral Member



Carrier Member



Organization Member

Chicago, Illinois

Dated: 7/31/02