

**PUBLIC LAW BOARD NO. 6249**

**PARTIES    )       BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**  
**TO            )**  
**DISPUTE    )       UNION PACIFIC RAILROAD COMPANY (FORMER SOUTHERN**  
**)       PACIFIC TRANSPORTATION COMPANY (EASTERN LINES))**

**STATEMENT OF CLAIM**

Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier assigned outside forces (Benton & Brown Company, Inc.) to transport roadway machines and equipment from Shreveport to Burwick, Louisiana on December 18, 1996 (System File MW-97-80/1048344 SPE).

2. The Agreement was further violated when the Carrier failed to give the General Chairman advance written notice of its intention to contract out the work in question in accordance with Article 36.

4. As a consequence of the violations referred to in Parts (1) and (2) above, Machine Operators T. Caesar and P. W. Johnson shall each be allowed eight (8) hours' pay at their straight time rates.

**OPINION OF BOARD**

On December 18, 1996, employees of a contractor (Benton & Brown Company, Inc. of Shreveport, Louisiana) hauled a tie handler, backhoe, extended cab pickup truck and a dump truck from the facility in Shreveport to Burwick, Louisiana. The Organization received no notice from the Carrier that a contractor would be so utilized. This claim followed.

Article 36 of the Agreement requires the Carrier to give notice if its "... plans to contract out work within the scope of the applicable schedule agreement ...." However, because of the December 12, 1996 acquisition of the Iowa Junction - Avondale Line by the BNSF from the Carrier, the Carrier argues, in part, that the contracted work was not "... within the scope of the applicable schedule agreement ..." and thus notice from the Carrier was not required. Indeed, according to the

Carrier, it was the BNSF who contracted to remove equipment belonging to the BNSF and the Carrier cannot be held responsible for the BNSF's actions.

What complicates this is that the December 11, 1996 merger provisions obligated the Carrier to give notice concerning the transfer of work performed by the Carrier's employees and that notice was not given by the Carrier until March 21, 1997 — long after the dispute in this case arose.<sup>1</sup>

In *Awards 28, 29 and 35* of this Board, we rejected the Carrier's argument that the December 11, 1996 acquisition of the Iowa Junction - Avondale Line by the BNSF from the Carrier excused the Carrier from giving notice of subcontracting prior

to the Carrier's formal March 21, 1997 notification that "at the expiration of (15) days from the date of this notice, all work performed by BMW employees on the aforementioned lines will be transferred to the BNSF." See *Award 28* at 3, note 1, where we found that in light of the March 21, 1997 notice which was some three months after the contractor performed the disputed work "[t]he Carrier had control over the property at the time this dispute arose."

But, this is different. In *Awards 28, 29 and 35*, work was performed by contractors at locations where the Carrier's employees were working at a time when the work was still under the Carrier's control — *i.e.*, the notice of the transfer of work from the Carrier to the BNSF had not yet been given. But here, the Carrier's assertion is that as a result of the BNSF acquisition of Iowa Junction - Avondale Line *the BNSF* and *not* the Carrier engaged the services of a third party merely to haul away trucks and machinery which the BNSF had just acquired from the Carrier. According to the Carrier, this was not work which the Carrier controlled.

The burden in this case is on the Organization. The Carrier's asser-

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<sup>1</sup> The Carrier's March 21, 1997 notification provided:

Pursuant to Section 1 of the Agreement dated December 11, 1996, between the Union Pacific Railroad Company and the Brotherhood of Maintenance of Way Employees pertaining to the sale of the SP line between Iowa Junction, Louisiana and Avondale, Louisiana, to the Burlington Northern Santa Fe (BNSF), please accept this notice that, at the expiration of (15) days from the date of this notice, all work performed by BMW employees on the aforementioned lines will be transferred to the BNSF. Thereafter, the SPRR BMW collective bargaining agreement will cease to apply to all such work.

tion that it was the BNSF and not the Carrier that engaged the contractor to haul away the BNSF's trucks and machinery casts sufficient doubt upon the Organization's contention that the Carrier assigned the outside forces or was responsible for the contractor's performing the work. If the BNSF utilized a contractor to haul away its trucks and machinery, we cannot find that the disputed work was "... within the scope of the applicable schedule agreement ..." between *the Carrier* and the Organization. At best, this record is in dispute. A record in dispute on such a critical point cannot support the Organization's burden.

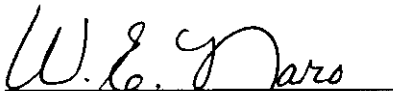
The claim shall therefore be denied.

**AWARD**

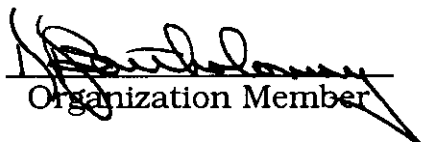
Claim denied.



Edwin H. Benn  
Neutral Member



Carrier Member



Organization Member

Dated: 7-15-02