

PUBLIC LAW BOARD 6430

Award No. 3
Case No. 3

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

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 (A&K Materials) to perform routine Maintenance of Way work of cleaning the right of way of rail, anchors, tie plates, spikes and joint bars between Montpelier, Idaho and McCammon, Idaho commencing October 13, 1998 and continuing (System File J-9852-78/1171326).
2. The Agreement was further violated when the Carrier failed to furnish the General Chairman with proper advance written notice of its intention to contract out said work and failed to make a good-faith attempt to reach an understanding concerning said contracting as required by Rule 52(a).
3. As a consequence of the violations referred to in Parts (1) and/or (2) above, Northwest District Roadway Equipment Operators M. J. Dunn, G. L. Purkey, Idaho Division Track Subdepartment Foreman R. A. Skinner, Idaho Division Track Subdepartment Sectionmen D. F. LeFevre and P. M. Cantu shall now each be compensated '... at his applicable straight time and overtime rate a proportionate share of the total hours worked by the contractor doing the work claimed as compensation for loss of work opportunity suffered from October 13, 1998, until the contractor is removed from Company property or until the project is completed.'

FINDINGS:

This Board, upon the whole record and all of the evidence, finds and holds as follows:

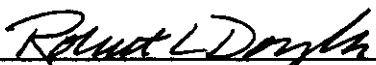
1. That the Carrier and the Employees involved in this dispute are, respectively, Carrier and Employees within the meaning of the Railway Labor Act, as amended;; and
2. That the Board has jurisdiction over this dispute.

OPINION OF THE BOARD:

A careful review of the record indicates that the present dispute involves an alleged "as is, where is" transaction. The present record, however, substantiates that the Carrier retained a significant amount of the relevant material. To the extent that the Carrier retained such material, an "as is, where is" transaction did not occur and the Carrier therefore violated the collective bargaining agreement by failing to assign its own employees to perform the disputed work. To the extent that the Carrier did not retain such material, an "as is, where is" transaction did occur and the Carrier did not violate the collective bargaining agreement by permitting outside forces to retrieve the material. As a remedy, the parties shall meet to determine the portion of the disputed work that violated the Agreement because the Carrier had retained the relevant material. For such work, the Carrier shall pay the appropriate proportion of straight-time hours to the appropriate Claimants.

AWARD:

The Claim is sustained in accordance with the Opinion of the Board.


Robert L. Douglas
Chairman and Neutral Member


D. D. Bartholomay
Employee Member


D. A. Ring
Carrier Member

Dated: 9/9/2002