

PUBLIC LAW BOARD 6430

Award No. 12
Case No. 12

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 (Flamingo Trucking) to perform Maintenance of Way work (unload and transport ballast) between Mile Posts 37.25 and 38.60 on the Marysville Subdivision on the Kansas Division on June 11 and 15, 1998 (System File W-9852-166/11511594).

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

3. As a consequence of the violations referred to in Parts (1) and/or (2) above, Eastern District Roadway Equipment Operators A. E. Emperley, L. J. Doebele, Jr. and Kansas Division Group 15 Truck Drivers T. W. Brummett and L. B. Brumbaugh shall now each be compensated for an equal proportionate share of the total number of man-hours expended by the outside forces in the performance of the work in question at their respective Groups 19 and 15 straight time rates and time and one-half rates of pay.

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 Carrier provided a 15-day notice to the Organization, in a letter dated July 8, 1997, concerning the Carrier's intent to solicit bids to contract certain future work. The notice to the Organization provided the following relevant information about the work:

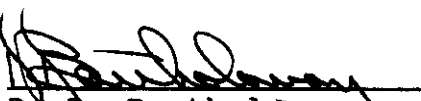
Specific Work: provide all labor, equipment and materials for grading, culvert extensions, subballast and related work for construction for two universal crossover ties.

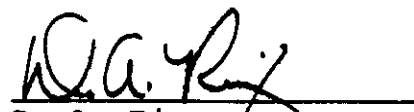
(Attachment No. 1 to Employees' Exhibit A-5 and Carrier's Exhibit B-1.) The present dispute involves the unloading and transporting of ballast by the outside forces subsequently retained by the Carrier. The movement of ballast, however, in this particular project constituted "related work" within the meaning of the 15-day notice. The record omits any evidence of bad faith by the Carrier in the issuance of the 15-day notice or during the actual conference between the representatives of the parties. Under these special circumstances, the Carrier therefore did not violate the Agreement.

AWARD:

The Claim is denied 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