

PUBLIC LAW BOARD 6430

Award No. 14  
Case No. 14

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 (Amrail Company) to perform Maintenance of Way work (clean right of way of scrap, old rail and general cleanup work) between Mile Posts 250 and 321 on the La Grande Subdivision commencing August 10, 1998 and continuing (System File J-9852-71/1162218).
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, System Gang Foreman J. S. Richins, System Roadway Equipment Operator K. S. Robins, Welder S. M. Spray and System Gang Laborers C. L. Delong and B. M. Blaylock '\*\*\* must each be allowed at his applicable rate a proportionate share of the total hours, both straight and overtime hours worked by the contractor doing the work claimed as compensation for loss of work opportunity suffered starting on August 10, 1998, continuing until such time as the contractor employes are removed from the property as the work claim is considered continuous. Additionally, in an effort to make Claimants whole for all losses suffered, we are also claiming that the Carrier must treat

Claimants as employees who rendered service on the days claimed qualifying them for vacation credit days, railroad retirement credits, insurance coverage and any and all other benefits entitlement accrued as if they had preformed (sic) the work claimed."

FINDINGS:

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

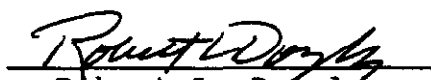
1. That the Carrier and the Employees involved in this dispute are, respectively, Carrier and Employees within the meaning of the Railway Labor Act, as amended,; and
2. That the Board has jurisdiction over this dispute.

OPINION OF THE BOARD:

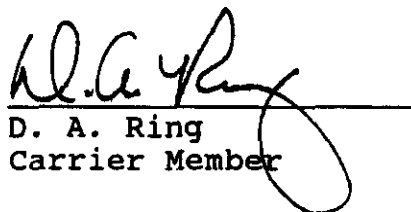
A careful review of the record indicates that the present dispute involves an alleged "as is, where is" transaction. The present record substantiates that the Carrier did not retain the relevant material. As a result, an "as is, where is" transaction occurred and the Carrier did not violate the collective bargaining agreement by permitting the outside vendor to send outside forces to retrieve the material.

AWARD:

The Claim is denied.

  
Robert L. Douglas  
Chairman and Neutral Member

  
D. D. Bartholomay  
Employee Member

  
D. A. Ring  
Carrier Member

Dated: 9/9/2002