

PUBLIC LAW BOARD NO. 7096

PARTIES) **BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**
TO)
DISPUTE) **UNION PACIFIC RAILROAD COMPANY (FORMER CHICAGO**
 NORTHWESTERN TRANSPORTATION COMPANY)

STATEMENT OF CLAIM

Claim of the System Committee
of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned outside forces (DeAngelo Brothers, Inc.) to perform Maintenance of Way and Structures Department work (operate truck with water tank and spray hose to spray vegetation around right of way crossings) between Mile Posts 113.7 and 80.3 on the Peoria Subdivision on May 29, 30, 31, June 1 and 2, 2002 instead of Mr. L. Wiseman (System File 3KB-6793T/138358 CNW).
- (2) The Agreement was violated when the Carrier assigned outside forces (DeAngelo Brothers, Inc.) to perform Maintenance of Way and Structures Department work (operate truck with water tank and spray hose to spray vegetation around right of way crossings) between Mile Post 80.3 to the Nelson Yard Limit on the Peoria Subdivision on June 3, 4, 5, 6, 7, 8 and 9, 2002 instead of Mr. J.

Goodin (System File 3KB-6794T/138359 CNW).

- (3) The Agreement was further violated when the Carrier failed to furnish the General Chairman with advance written notice of its intent to contract out the above-referenced work as required by Rule 1(b).
- (4) As a consequence of the violations referred to in Parts (1) and/or (3) above, Claimant L. Wiseman shall now be compensated for seventy-five (75) hours at this applicable rate of pay.
- (5) As a consequence of the violations referred to in Parts (2) and/or (3) above, Claimant J. Goodin shall now be compensated for one hundred five (105) hours at this applicable rate of pay.

OPINION OF BOARD

This is another claim factually similar to the dispute decided in *Award 3* (as also incorporated in *Award 5*) of this Board involving the five year systemwide contract the Carrier entered into with DeAngelo

Brothers, Inc. for vegetation clearing on various portions of the Carrier's right of way. The findings in that award with respect to exclusivity and notice requirements are incorporated into this award.

In denying the claim in *Award 3*, this Board also found:

... [T]he burden is on the Organization to demonstrate all the necessary elements of its claim and a record in such substantial factual conflict cannot be found sufficient for us to conclude that the Organization has carried its burden.

This record in this matter is well-developed focusing upon the issue concerning special licenses or permits to perform the spraying of chemicals.

The Organization asserts (and demonstrates through employee statements) that Maintenance of Way forces have performed similar type of spraying work performed by DeAngelo Brothers' forces; the spraying in question involved chemicals which the Organization asserts can be purchased over the counter; and there is an assertion by the Organization (albeit, hearsay) that the DeAngelo Brothers' employee performing the work did not possess any special licenses or permits.

On the other hand, the Carrier has demonstrated that its contract

with DeAngelo Brothers requires the contractor to "... obtain all necessary permits and licenses for handling, applying and disposing of chemical herbicides"; Maintenance of Way forces do not have such licenses or permits; an assertion that licenses and permits are required to spray these types of chemicals and herbicides on property not owned by the company performing the spraying work; and the argument that the Carrier is not obligated to piecemeal large projects such as even though there is arguably some portion of the work could be performed by the Carrier's forces.

The Organization counters the Carrier's assertions with respect to licenses and permits arguing that there is nothing in the record to definitively show that such licenses and permits are required.

While the record is well-developed, the conflicting facts and assertions brought forward by the parties make the point. There is just too much conflict in the record for this Board to make the necessary definitive findings. But the burden is on the Organization. Therefore, for the same reasons expressed in *Award 3*, the conflicting nature of the record requires that this claim be denied.

AWARD

Claim denied.

Edwin H. Benn

Edwin H. Benn
Neutral Member

D. A. Ring

D. A. Ring
Carrier Member

R. C. Robinson

R. C. Robinson
Organization Member

Chicago, Illinois

Dated: March 18, 2008