

PUBLIC LAW BOARD NO. 7096

PARTIES) **BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**
TO)
DISPUTE) **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 (Knox Kershaw, Inc.) to perform Maintenance of Way and Structures Department work (operate and maintain an undercutter) in removing and replacing ballast on the right of way starting at Lexington, Nebraska and heading west commencing on September 23, 2002 and continuing, instead of System Group 20 Roadway Equipment Operators R. Wehrer, R. Hutchinson and H. Lambert (System File C-0252-119/1342027).
- (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 re-

quired 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, Claimants R. Wehrer, R. Hutchinson and H. Lambert shall now each be allowed an equal proportionate share of the man hours worked by the outside contracting force as described in this claim, at their respective Group 20 straight time and overtime rates of pay as compensation for the violation of the Agreement for hours worked by the outside contracting force in operating and maintaining recognized Maintenance of Way Equipment, a group 20 REO Undercutter. This claim for compensation includes that Claimants be compensated for the loss in what is normally considered overtime hours for Maintenance of Way Employees.

OPINION OF BOARD

The dispute in this case raises similar issues discussed and decided in *Award 15* of this Board with respect to the Carrier's notice obliga-

tions under Rule 52. The specific dispute in this case (involving the same Claimants as in *Award 15*) concerns the Carrier's contracting of undercutter work, which commenced September 23, 2002.

For reasons discussed in detail in *Award 15*, we find that the Carrier's notice obligations under Rule 52 have not been met. But even more compelling than in *Award 15*, in this record and in response to the Organization's assertion that it was not provided advance notice of the Carrier's intent to contract the disputed work which commenced September 23, 2002, the only documentation of a notice was an internal form letter document dated November 9, 1999:

November 9, 1999

Service Order No. 16538

@<@General Chairman
Name/Address@>@

Mr. @<@General Chairman
Name/Address@>@:

This is a 15-day notice of our intent to contract the following work:

Location: Railroad's system-wide trackage.

SpecificWork: Provide supervision, labor, and track production undercutting equipment to assist Railroad forces in track

maintenance on an "as needed" basis.

* * *

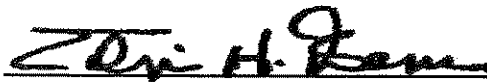
In addition to the reasons discussed in *Award 15*, his form letter is not enough to sufficiently show that the Carrier met its notice obligations under Rule 52 and that the required advance notice of its intent to contract out the disputed work was sent to the Organization. And further, there is insufficient evidence that a form dated November 9, 1999 covers the disputed work which commenced almost three years later on September 23, 2002. Nor is there evidence to show that if such a notice was sent in 1999 as the Carrier asserts, the Organization was specifically further advised that the contract transaction was for a multi-year period that would encompass the disputed work in this case. *Compare Awards 3, 5, 9 and 13* of this Board where we found that a five year contracting arrangement with a contractor did not require renewed periodic notices to be issued by the Carrier during that five year term because the Organization was advised of the nature of the multi-year contract.

For a remedy and as in *Award 15*, because the Carrier's notice obligations were not met under Rule

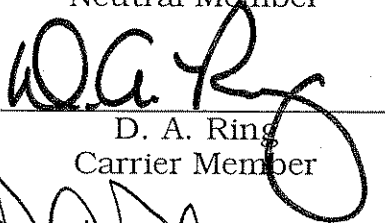
52 for the disputed work, Claimants shall therefore be made whole for the lost work opportunities.

AWARD

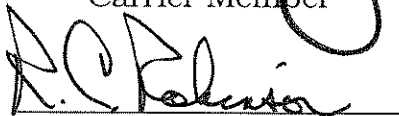
Claim sustained.



Edwin H. Benn
Neutral Member



D. A. Ring
Carrier Member



R. C. Robinson
Organization Member

Chicago, Illinois

Dated:

April 8, 2008