

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 to perform Maintenance of Way and Structures Department work (operate chainsaws and bobcat loader to cut and remove trees on the right of way) between Mile Posts 12.0 and 19.0 on the Altoona Subdivision on May 8 and 9, 2004, instead of District T-7 employees C. Reiswig and A. Steffen (System File 7WJ-7408T/1407587 CNW).
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with proper advance written notice of its intent to contract out the above-referenced work or make a good-faith attempt to reach an understanding concerning such contracting as required by Rule 1(b).
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above,

Claimants C. Reiswig and A. Steffen shall now each be compensated at their applicable rate of pay for an equal and proportionate share of the eighteen (18) man/hours of work performed on the dates under claim by Contractor forces in performance of the cutting trees and brush from the Carrier right of way between MP 12.0 and MP 19.0 on the Altoona Subdivision.

OPINION OF BOARD

This is another dispute centering upon the five year systemwide contract the Carrier entered into with DeAngelo Brothers, Inc. to perform brush cutting and chemical treatments on various portions of the Carrier's right of way. *See Awards 3, 5, and 13* of this Board and other awards referenced therein.

Those awards establish several basic propositions with respect to the DeAngelo Brothers' contract and the Carrier's obligations under Rule 1(B) of the Agreement:

First, exclusivity is not a necessary element to be demonstrated by the Organization in contracting claims and brush cutting is typical Maintenance of Way work falling under the Scope Rule, which therefore obligates the Carrier to give the Organization not less than 15 days advance notice of a contracting transaction involving such work as required by Rule 1(B).

Second, failure by the Carrier to give the required advance notice results in frustration of the notice and conference procedures established by Rule 1(B) and will result in sustaining awards making the adversely affected employees whole for lost work opportunities.

Third, while the five year system-wide contract with DeAngelo Brothers for brush cutting and chemical treatments is certainly a lengthy contract, nothing in Rule 1(B) prohibits the Carrier from entering into such a long term arrangements.

Fourth, nothing in Rule 1(B) obligates the Carrier to give periodic subsequent notice to the Organization if the initial notice requirements concerning the DeAngelo Brothers' contract have been met.

Fifth, the Organization was given timely notice of the initial con-

tracting transaction with DeAngelo Brothers.

Sixth, because this is a rules dispute, the Organization bears the burden to demonstrate all of the necessary elements of its claim and records which are sufficiently in factual dispute will result in findings that the Organization has not carried that burden.

Seventh, the fact that at times and as part of the larger project DeAngelo Brothers' forces may perform brush cutting work which does not simultaneously result in the application of chemicals requiring special licenses or training or may operate equipment which the Carrier might have are not reasons, in and of themselves, for sustaining claims. Piecemealing of a large project such as that covered by the DeAngelo Brothers' contract is not required.

Turning to this particular case, and as found in the above mentioned awards (and as also demonstrated by this record by the Carrier's December 21, 2004 letter), the advance notice requirements for the five year systemwide contract between the Carrier and DeAngelo Brothers were met. While the Organization points out that on the property a Carrier official stated that "... I am sure the unions are

notified each year of the work being planned ..." and there is no evidence that such yearly notice was given for the work in dispute in this case, that observation does not undermine fact that the Organization received initial advance notice of the lengthy contract between the Carrier and DeAngelo Brothers and the relevant language does not obligate the Carrier to give such subsequent periodic notice once it meets its initial notice requirements. Perhaps it would be a good managerial practice for the Carrier to give such periodic notice to the Organization — a practice which might serve to avoid similar disputes such as this in the future. However, Rule 1(B) does not require such subsequent periodic notice.

With respect to the merits of the reasons for contracting, again, there is conflict in this record concerning the duties performed and, at best, given the breadth of the DeAngelo Brothers' contract, because the Carrier is not obligated to piecemeal the larger project, the performance of certain isolated work by DeAngelo Brothers' forces is not made improper.

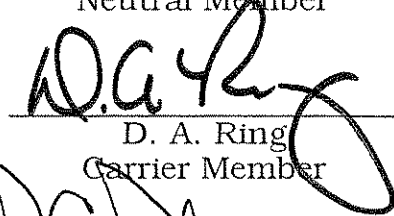
For the above reasons, the claim shall be denied.

AWARD

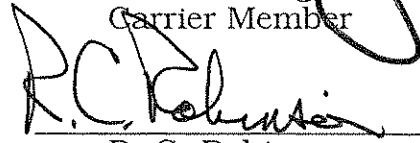
Claim denied.



Edwin H. Benn
Neutral Member



D. A. Ring
Carrier Member



R. C. Robinson
Organization Member

Chicago, Illinois

Dated: April 8, 2008