

PUBLIC LAW BOARD NO. 7099

**BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYEES, DIVISION OF I.B.T.**

CASE No. 01

-And-

**UNION PACIFIC RAILROAD
COMPANY**

STATEMENT OF CLAIM:

The Claim, as described by the Petitioner, reads as follows:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned outside forces (Rossi Construction) to perform Maintenance of way and Structures Department work (operate backhoe and endloader) to dig, fill and level a hole to uncover and recover a broken water line between 3 and 4 main at County Line in Proviso Yard at Northlake, Illinois on January 9, 10 and 11, 2001.
- (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 and the December 11, 1981 Letter of Understanding.
- (3) As a consequence of the violations referenced to in Parts (1) and/or (2) above, Claimants D. R. Pineda and J. Alexander shall now be each compensated for nineteen (19) hours' pay at the overtime rate of pay.”

The Carrier has declined this claim.”

Upon the whole record and all the evidence, after hearing, the Board finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and this Board is duly constituted by agreement under Public Law 89-456 and has jurisdiction of the parties and subject matter.

AWARD

After thoroughly reviewing and considering the record of this case together with the parties' presentation, the Board finds that the claim should be disposed of as follows:

The relevant and material facts are not in dispute. Thus, it is undisputed that in January 2001, the Carrier experienced a water main break in the Proviso Yard at Northlake, Illinois.

Subsequently, on January 9, 10 and 11, 2001, the Carrier utilized the services of an outside contractor, Rossi Construction, to effect temporary and then permanent repairs to the broken water line. The record reflects that a common backhoe and end loader were used by Rossi Construction to accomplish this task. From the record created during the on-property handling of this matter, it was established that Carrier Forces represented by the Sheet Metal Workers Union (SMWIA) effected temporary and then permanent repairs to the broken water line. The record further reflects that the Carrier utilized the services of Rossi Construction, an outside contractor, to dig, fill and level a hole in the Proviso Yard, Northlake, Illinois. Rossi Construction utilized the services of two of its employees who used a common backhoe and end loader in order to accomplish the excavation work. In addressing claims by the Organization that it should have utilized BMWF represented employees to perform the excavation work, the Carrier asserted that (a) the Carrier was not required to piecemeal this incidental excavation, and (b) the situation was an “emergency” and even if the work was properly claimed by the Organization, which the Carrier asserts it did not, notice was not required under these circumstances.

As our first order of business, it must be determined whether the excavation work at issue can properly be claimed by the Organization. Rule 1, Scope, provides, in relevant part:

(b) Employees included within the scope of this Agreement in the Maintenance of Way and Structures Department shall perform all work in connection with the construction, maintenance, repair and dismantling of tracks, structures and other facilities used in the operation of the Company in the performance of common carrier service on the operating property.

While Rule 1 is broad in scope, covering all work in connection with the maintenance, repair and dismantling of tracks, structures and other facilities used in the operation of the Company, it must be determined whether the Rule is broad enough to cover excavation work performed in conjunction with the repair of a broken water main break. Narrowing this question further, it

must be determined if the repair of a broken water main fits within the repair of “structures and other facilities” referenced in Rule 1. A careful review of the cases submitted by both the Carrier and the Organization persuade us that Rule 1 does not encompass the excavation work at issue.

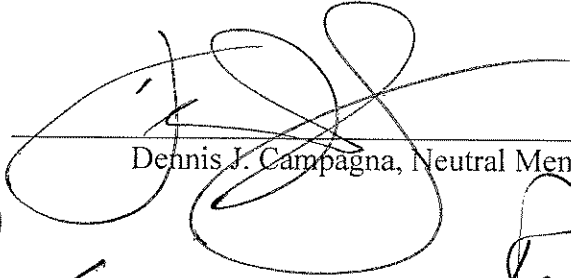
Beginning with PLB 1844, Case No. 8 (Eischen, 1977), the Board determined that the removal of snow from a suburban station platform was scope covered work that should have been performed by BMW forces. In making this determination, the Board concluded that the station platform was part of the facility structure, and thus fit within the scope of Rule 1. In PLB 7097, Case No. 4, (Kohn, 2008), the Board determined that the placement of signs and providing crossing protection in connection with BMW crews who were performing crossing and track repair work was work that should have been performed by BMW represented forces. In that case, the Board was persuaded by statements from 23 employees with many years of experience who maintained that they had “routinely” performed this type of work. In PLB 7096, Award No. 1 (Benn, 2008), the Board determined that cutting and removal of all brush and vegetation together with the application of an herbicide to prevent re-growth was “work in connection with the . . . maintenance . . . of tracks . . .” and thus within the scope of Rule 1 and therefore should have been performed by BMW represented forces. In PLB 7096, Award No. 12 (Benn, 2008), the Board concluded that cutting and grading work on the right of way was included within the scope of Rule 1, and in Award No. 14 (Benn, 2008), that the cleaning of the right of way and preparation work for installation of track), in Award No. 15 & 16 (Benn, 2008), that the removal and replacement of ballast on the right of way were within the scope of Rule 1 as well. The common thread running through each of these cases lies in the performance of work associated with structures or other facilities (Eischen) and/or work directly associated maintenance of tracks (Kohn & Benn), work that should have been performed by BMW forces.

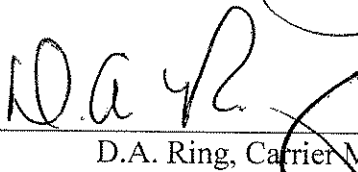
Now turning to the facts in the instant case, it cannot be concluded that the work performed by Rossi Construction was of the type traditionally performed by BMW forces within the scope of Rule 1. In addition, unlike the case before the Board in PLB 7097, Case No. 4, there are no letters from BMW represented employees attesting that the work at issue, particularly as it relates to the repair of a broken water main, is work that has traditionally been performed by

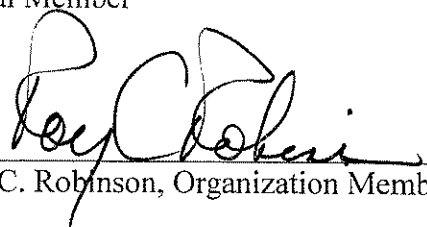
them. Accordingly, we are left with the claim made by the Carrier that work of the nature at issue is properly performed by SMWIA represented employees.

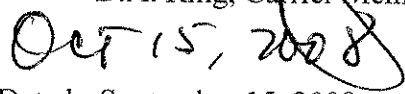
AWARD

Claim denied.



Dennis J. Campagna, Neutral Member

D.A. Ring, Carrier Member

R. C. Robinson, Organization Member
Dated: September 15, 2008

Buffalo, New York