

**PUBLIC LAW BOARD NO. 7201
CASE NO. 7**

PARTIES TO THE DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(and
(
(Soo Line Railroad Company
((former Chicago, Milwaukee, St. Paul and
(Pacific Railroad Company)

STATEMENT OF CLAIM: “Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated with the Carrier assigned outside forces (Hy-Shine, Inc.) to perform Bridge and Building Sub-department work (paint and related work) on the lower floor of the 8-Spot Overhaul Building in St. Paul Yard on October 12, 13, 19, 20, 26, 27, November 9, 10, 16 and 17, 2002, instead of Messrs. S. DeJarlais, S. Berger and L. Helland (System File C-40-02-C080-12/8-00228-075 CMP).

(2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with an advance written notice of its intent to contract said work as required by Rule 1 and failed to enter into good-faith discussion to reduce the use of contractors and increase the use of the Maintenance of Way forces as set forth in Appendix I.

(3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants S. DeJarlais, S. Berger and L. Helland shall now each be compensated at their respective straight time rates of pay for a proportionate share of the two hundred forty (240) total hours worked by the outside forces.”

FINDINGS:

The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by Agreement; this Board has jurisdiction over the dispute involved herein; and that the parties were given due notice of the Hearing held.

Claimants to the instant dispute have all established and hold seniority in the Maintenance of Way and Structures Department, Bridge & Building Sub-department. At the time of the instant dispute, all were assigned and working their respective positions on St. Paul B&B Crew No. 47R.

Beginning on October 12, 2002, the Carrier assigned outside forces (Hy-Shine, Inc.) to perform preparatory work and painting on the floor of the 8-Spot Overhaul Building in the St. Paul Yard, each worker expending 8 hours per day. The Contractor's employees acid washed, rinsed, and painted the floor, applied sand to create a non-skid surface and applied a second coat of paint. The work commenced on October 12, 2002 and continued on October 13, 19, 20, 26, and 27, November 9, 10, 16 and 17, 2002.

The Organization contends that the Agreement was violated when the Carrier contracted the preparatory work and painting of the floor of the 8-Spot Overhaul Building in the St. Paul Yard, which is work that is properly reserved to the Organization. First, it claims that the Carrier did not provide adequate Notice to the Organization as required. According to the Organization, the Carrier had customarily assigned work of this nature to the Carrier's Maintenance of Way Employees. The Organization further claims that the work in question is consistent with the Scope Rule. According to the Organization, the Carrier's Maintenance of Way Employees were fully qualified and capable of performing the designated work. According to the Organization, Claimants were available, qualified and willing to perform the work involved had the Carrier rescheduled the work to which they were already assigned. The Organization argues that because Claimants were denied the opportunity to perform the relevant work, Claimants should be compensated for the lost work opportunities.

Conversely, the Carrier takes the position that the Organization cannot meet its burden of proof in this matter. The Carrier claims that the work does not belong to the Carrier's BMWF represented Employees under either the express language of the Scope Rule or any binding past practice. In addition, the Carrier contends that the work is specialized and BMWF forces do not have the ability to perform such work. Because the relevant work is outside the scope and expertise of Organization forces, the Carrier contends that it was not required to send Notice to the Organization.

Appendix D, Article IV of the May 1968 National Agreement indicates as follows:

In the event a carrier plans to contract out work within the scope of the applicable schedule agreement, the carrier shall notify the General Chairman of the organization involved in writing as far in

advance of the date of the contracting transaction as is practicable and in any event not less than 15 days prior thereto.

If the General Chairman, or his representative, requests a meeting to discuss matters relating to the said contracting transaction, the designated representative of the carrier shall promptly meet with him for that purpose. Said carrier and organization representatives shall make a good faith attempt to reach an understanding concerning said contracting, but if no understanding is reached the carrier may nevertheless proceed with said contracting, and the organization may file ... claims in connection therewith.

Nothing in this Article IV shall affect the existing rights of either party in connection with contracting out. Its purpose is to require the carrier to give advance notice and, if requested, to meet with the General Chairman or his representative to discuss and if possible reach an understanding ...”

Having reviewed the instant case, this board finds that the Carrier did not provide to the Organization the advance Notice required. The work in question was arguably scope-covered and at a minimum, the Carrier should have provided Notice to the Organization before contracting out the work. Such a requirement must have been fulfilled by the Carrier in order to sustain its position. “... If the Organization has established that BMW-employees have, at times, performed the disputed work, then advance Notice is required even if Organization forces have not performed the work to the exclusion of other crafts or contractors.” Third Division Award 36516 (Kenis, Referee 4/23/03) See Also Third Division Award 36514 (Kenis, Referee 4/23/2003) *See Also* Third Division Award 36292 (Mittenthal 10/28/02) Thus, the Claim will be sustained.

As a remedy, due to lost work opportunities, Claimants shall be made whole for the actual number of hours of contractor-performed work at Claimants’ respective rates of pay.

Claim sustained.

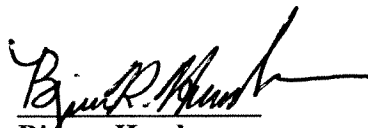
AWARD

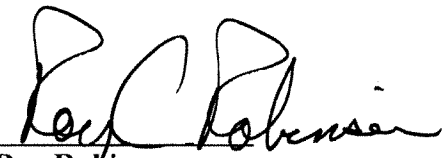
Claim sustained.

**Steven
Bierig**

Digitally signed by Steven Bierig
DN: cn=Steven Bierig, o,
ou=Attorney- Arbitrator-Mediator,
email=arb438@comcast.net, c=US
Date: 2010.06.14 16:24:49 -05'00'

Steven M. Bierig
Chairperson and Neutral Member


Bjarne Henderson
Carrier Member


Roy Robinson
Organization Member

Dated at Chicago, Illinois this 14th day of June 2010.