

**PUBLIC LAW BOARD NO. 7201  
CASE NO. 13**

**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 when the Carrier assigned outside forces (Frederick Corporation) to perform Maintenance of Way & Structures Department work (cut brush and related work) on the right-of-way on the Bloomingdale Line in the vicinity of Chicago, Illinois beginning on December 16, 2002 and continuing through January 11, 2003, instead of Messrs. J. Martinez, E. Carabez, R. Lightheart and I. Nunez (System File C-54-02-C080-22/8-00228-083 CMP).**

**(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 said work as required by Rule 1 and failed to enter good-faith discussion to reduce the use of contractors and increase the use of 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 J. Martinez, E. Carabez, R. Lightheart and I. Nunez shall now be compensated 'for a proportionate amount of six hundred forty (640) hours at the applicable straight time rate of pay and three hundred ten (310) hours at the applicable overtime rate of pay as a result of the Carrier assigning recognized and contractually approved maintenance of way work to be performed by an outside contractor, namely Frederick Corporation, and its five (5) employees who possess no seniority or other contractual rights under the Schedule of Rules Agreement, Form 2625 between December 16, 2002 and January 11, 2003.'" (Emphasis in original)**

**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 Track Subdepartment. At the time of the instant dispute, all were regularly assigned and working their respective positions in their respective classes on Bensenville Section Crew #716 headquartered in Bensenville, Illinois.

On December 16, 2002 and continuing through January 11, 2003, outside forces (Frederick Corporation) allegedly performed Maintenance of Way and Structures Department work by cutting brush and related work from the right-of-way on the Bloomingdale line near Chicago, Illinois. According to the Organization, the outside contractor used 5 employees to perform the work of cutting and chipping small bush and vegetation. According to the Organization, the outside forces expended a total of 640 hours of straight time and 310 overtime hours performing the above-described work.

The Organization contends that the Agreement was violated when the Carrier contracted the cutting and chipping of small brush and vegetation 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. Further, 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. 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. First, the Carrier contends that it gave proper Notice to the Organization of its intent to contract out the relevant work. In addition, the Carrier contends that the area on which the work was performed was dormant track. According to the Carrier, in such an area, the Carrier does not have the obligation to assign the work to Organization forces. Further, the Carrier claims that the work does not belong to the Carrier's BMWWE represented

Employees under either the express language of the Scope Rule or any binding past practice.

First, as to the alleged Notice violation, we find the Organization has not met its burden of proof in this matter. The evidence in this matter shows that the Carrier did serve Notice to the Organization.

Next, the Carrier contends that the Bloomingdale line was non-operating property at the time of the Claim. According to the Carrier, work on non-operating properties is not reserved to the Organization. According to the Carrier, the Organization never refuted that the Bloomingdale line was placed out of Service by a General Order of May 20, 2000, almost 19 months prior to the work in question. Further, it was unrebutted that the Carrier operates no trains in this area. According to the Carrier, the work in question was performed pursuant to the demands of the City of Chicago.

According to the Carrier, it has been longstanding Third Division precedent that work on property that is no longer used or useful in the Carrier's operation is not reserved to the Organization. Specifically, the Carrier points to 3<sup>rd</sup> Division Awards 32341, 32325, 31885, 30948, 30838, 21993, 19994, 12918 and 4783.

Specifically, in Award 30948, Referee Benn held:

Notwithstanding the logic of the Organization's arguments, for purposes of stability we are obligated to follow Awards on the property which resolve similar issues and which are not palpably erroneous. The issues raised in this case have been decided on the property. We find that decision is not palpably in error. See Third Division Award 30716:

The threshold issue which must first be resolved in this case, and which was properly raised in the handling of this case on the property, is whether the work in question falls within the scope of the Agreement. The Board has held in a long line of Awards that work on facilities owned by a Carrier, but used for purposes other than the operation or maintenance of the railroad, do not come under the Scope Rule of the Agreement. ...

\* \* \* \*

In Third Division Award 19994, the Board stated:

'We are not persuaded by Petitioner's argument with respect to the continued ownership by Carrier of the salvaged rails and other material. The critical question is not the continued ownership of the salvaged rails and real property, but the purpose for which the work was intended; was the work performed related to the operation and/or maintenance of the railroad

**or not. ...” We must conclude that work on abandoned facilities, even though Carrier retains ownership of the property, is not work contemplated by the parties to the Agreement and such work is not within the scope of the applicable schedule Agreement.’ ”**

**In this case, the Carrier contracted out the dismantling of track on abandoned property. For the reasons discussed in Third Division Award 30716 and the Awards cited therein and for the same reasons also discussed in Third Division Award 30946, we have no choice but to deny the claim.**

**In the instant case, the above-captioned precedent does apply. We find that the property in question was no longer being used for operating purposes. As such, the work of brush cutting and chipping does not fall within the scope of the Organization. Therefore, the Carrier was not in error when it denied the instant Claim.**

**The Claim is denied.**

**AWARD**


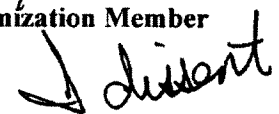
**Claim denied.**

**Steven  
Bierig**

Digitally signed by Steven Bierig  
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Date: 2010.06.14 13:30:01 -05'00'

**Steven M. Bierig  
Chairperson and Neutral Member**

  
**Bjørne Henderson  
Carrier Member**

  
**Roy Robinson  
Organization Member**  


**Dated at Chicago, Illinois this 14<sup>th</sup> day of June 2010.**