PUBLIC LAW BOARD NO. 2556

Award No. 10

Case No. 12
Docket No. MW-184

Case No. 13
Docket No. MW-185

Case No. 14
Docket No. MW-186

Parties to Dispute: Brotherhood of Maintenance of Way Employees and Southern Railway Company

Statement of Claim: Claim on behalf of E. R. Brown, et. al., for proportionate share of man hours worked account contractor performed work with ballast regulator and tamper on 11/8-10, 13-17, 20-22/78 and continuing.

Claim on behalf of D. T. Newport, et. al., account contractor unloaded material, did ditching and laid ribbon rail between M. P. 292 and 295 on 9/5-15, 18-22/78 and continuing.

Claim on behalf of D. T. Newport, et. al., for equal proportionate share of total man hours worked account contractor removed lap switches from main line and joined siding with main line between M.P. 293.4 and 293.6 on 12-18-78.

Findings: The Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated October 17, 1979, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

The instant claims involve the same issue as found in the claims which resulted in our Board's Award No. 9 the findings of which, by reference hereto, are incorporated herein and made part hereof.

In the instant case it became necessary to contract out work involved in the consolidation of lap passing tracks at Evansville, Tennessee, to perform one long siding on the Cincinnati, New Orleans,

and Texas Pacific Railway Company (NO&TP). As in our Award No. 9, the record reflects that the General Chairman was given notice specifying the nature and type of work to be contracted out.

Here, as in our Award No. 9, the record fails to show that the Employees assumed the burden of proof necessary to establish through presentation of probative evidence that the work contracted out was of the type which only employees under MofW agreement have traditionally and customarily performed.

Here, as in Award No. 9, we find, absent a showing that said MofW employees have performed such work exclusively, that the record reflects Carrier followed Agreement Rule 59 and the long established and well recognized practices thereunder in contracting out the work complained of. The record reflects that the work was required to be started at the earliest possible date, that there were no furloughed employees on the Northwest seniority region available to perform the work, that the existing force of MofW employees were engaged in necessary maintenance and construction work which could not be deferred, that necessary machines and equipment were not available, and that even if such equipment were available the work to be performed would be beyond the capacity of the existing force to complete the work within the time allotted and at the same time perform the other necessary maintenance and construction work in which engaged.

The practice of contracting out work, as asserted by Carrier, was reinforced by a demonstration of 11 instances in which upgrading projects of similar character had been contracted out in recent years under similar circumstances.

Therefore, on the record the Board finds the claim to be without merit and the instant claim will be denied.

Award: Claim denied.

A. D. Arnett, Employee Member

R. J. Spenski, Carrier Member

Arthur T. Van Wart, Chairman
and Neutral Member

Issued at Wilmington, Delaware, April 18, 1981.