

Parties  
to the  
Dispute

BROTHERHOOD OF MAINTENANCE  
OF WAY EMPLOYES

vs.

MAINE CENTRAL RAILROAD COMPANY-PORTLAND  
TERMINAL COMPANY

Case No. 2  
Award No. 2

STATEMENT OF CLAIM

Claim of the Brotherhood (MW-84-10) that:

(a) The Carrier has violated the Scheduled Agreement, particularly Article IV of the 1968 Contracting Out Agreement, as amended by the 1981 Mediation Agreement, when Contract, Inc. (contractor) was employed by the Carrier to remove rail, ties, and perform other maintenance of way work on the Hartland Branch, Division II Seniority District, between mile post 102.45 and mile post 110.52, commencing on December 12, 1983, until completion in February of 1984.

(b) The following furloughed Maintenance of Way employees:

P. L. Sanborn  
M. Hamblet  
E. F. Soucy  
G. N. Patterson

D. S. Bubar  
R. M. Merrithew  
E. A. Wood  
R. R. Hartsgrrove

shall each be equally compensated at the trackman's rate of pay for the total number of man hours expended by the contractor for work which is customarily performed by Maintenance of Way employees, as prescribed in the scope of the Scheduled Agreement, for the Carrier's failure to discuss this matter with the General Chairman and for the Carrier's failure to abandon this line of railroad in accordance with the provisions prescribed by the I.C.C. decision.

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OPINION OF THE BOARD

From December 1983 to February 1984, Carrier contracted out the work of dismantling and removing materials on the Hartland Branch, a short branch line eight miles in length. The Organization filed a claim on behalf of eight furloughed employees, alleging that the work rightfully accrued to Track Department Forces.

For the Organization's claim to succeed, it must show, by Agreement, custom, history, or practice, that this work on abandoned lines was exclusively with the scope of work performed by Organization members. It did not do so. Carrier contended, and the Organization did not refute the fact, that while, at times in the past, it has used its own employees to assist in removal of materials, it had also used an outside contractor without claim from the BMWE.

The Organization also argued that Carrier violated the Agreement (specifically Article IV, Contracting Out, of the May 17, 1968 National Agreement) when it did not hold a conference with the General Chairman to discuss its intent to contract out. While there is no dispute that Carrier did properly notify the Organization of its plans, there is dispute over whether or when the Organization requested a conference. Because the Organization waited until after the final denial to contradict Carrier's allegation that the Organization had not sought a conference, we cannot determine with certainty that a

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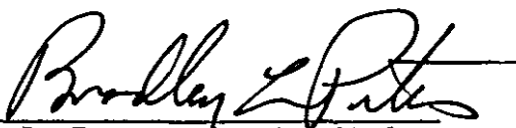
conference was requested.

The question of whether Carrier did or did not have equipment available is not germane under these circumstances, nor do we find sufficient basis to support the Organization's contention that the line was not properly abandoned at the time the work was performed.

AWARD

Claim denied.

  
C. H. Gold, Neutral Chairman

  
B. L. Peters, Carrier Member

  
W. E. LaRue, Employee Member

7/30/87  
Date of Adoption