

PUBLIC LAW BOARD NO. 4306

Parties to the Dispute	:		:	
	:	BANGOR AND AROOSTOCK RAILROAD COMPANY	:	Case No. 5
	:		:	Award No. 5
	:	and	:	
	:		:	
	:	BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES	:	
	:		:	
	:		:	
	:		:	
	:		:	

STATEMENT OF CLAIM

Time claim for four (4) men on the Oakfield Section Crew for fifty-eight (58) hours at the punitive rate for work contracted out to the Oakfield Fire Department.

OPINION OF THE BOARD

In April 1985, Carrier retained the service of the Oakfield Volunteer Fire Department to burn grass along the right of way between MP.148.2 and MP.146.4. The Fire Department burned this area in the evening and when weather conditions allowed. Claimants, four members of the Oakfield Section crew, contend that they should have performed the work of burning grass and, at most, the Volunteer Fire Company should have been available to assist them and not perform the work without utilization of Carrier employees. The employees rely on Article

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IV, Contracting Out, of the 1968 National Agreement and the Hopkins-Berge Letter of December 11, 1981 to support their position. The pertinent part of those documents reads as follows:

ARTICLE IV - CONTRACTING OUT
(1968 National Agreement)

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 and progress claims in connection therewith.

SIDE LETTER OF AGREEMENT - DECEMBER 11, 1981
(1981 National Agreement)

...The carriers assure you that they will assert goodfaith efforts to reduce the incidence of subcontracting and increase the use of their maintenance of way forces to the extent practicable, including the procurement of rental equipment and operation thereof by carrier employees.

The parties jointly reaffirm the intent of Article IV of the May 17, 1968 Agreement that advance notice requirements be strictly adhered to and encourage the parties locally to take advantage of the good faith discussions provided for to reconcile any differences. In the interests of improving communications between the parties on subcontracting, the advance notices shall identify the work to be contracted and the reasons therefor.

Carrier contends that the work of burning grass along the right of way is not work exclusively reserved by past practice, custom, or Agreement to Maintenance of Way employes and, as such, it is not obligated to notify the General Chairman when it intends to have such work performed by outsiders.

The Board has reviewed the documents presented and the arguments offered on behalf of each side and must conclude that Carrier's position in this instance is not defensible.

Article IV requires that Carrier notify the General Chairman of its intent to contract out work within the scope of the Organization's Agreement. There is no question that burning of grass along the right of way is work that falls within the scope of Maintenance of Way work. While it may not be work exclusively performed by Maintenance of Way employes, when it is done by Carrier employes, it is done by members of the M & W Department. The record states that, in the past, the local fire department and Carrier's people worked together when grass was burned along the right of way. This clearly establishes that the work in question is normally performed by Carrier's people with the help of local fire fighters. Carrier had an obligation to notify the General Chairman of its intent to have the grass burned by the Oakfield Fire Department. The General Chairman could then, if he chose, present arguments to support giving the work to his members and keeping it on the property. Carrier could then agree

or not agree and proceed to have the work done in the manner it considered most appropriate. If the Union then thought its rights were violated, it could file a claim. Most likely at that point, a claim would be very difficult for the Union to support. In the instant case, however, Carrier neglected that step and moved to have the work in question done by the local Fire Department, a clear violation of the Agreement.

Since the work in question was completed after the employees' regular work day, all crew members would have been available to perform the work. This Board will therefore sustain the instant claim for 58 hours at the pro rata rate for the four members of the Oakfield Section Crew. The pro rata rate in this instance is the appropriate one since employees are receiving compensation for work denied them, not work performed on an overtime basis.

AWARD

The claim is sustained per Opinion
of the Board.

R. E. Dennis
R. E. Dennis, Neutral Member

W. E. LaRue
W. E. LaRue, Employee Member

D. R. Jewell
D. R. Jewell, Carrier Member

May 31, 1988
Date of Adoption