

BEFORE PUBLIC LAW BOARD NO. 5546

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
UNION PACIFIC RAILROAD COMPANY

Case No. 11

STATEMENT OF CLAIM: Claim of the Brotherhood that:

1. The Agreement was violated when the Carrier assigned outside forces (Overhead Door Company) to perform Bridge and Building Subdepartment work (removed and relocated an overhead door) at the south and north ends of the breezeway located next to Building 30 and the Steel Car Shop at Pocatello, Idaho, on June 9, 1992 (System File R-39/920514).
2. The Agreement was further violated when the Carrier failed to furnish the General Chairman with a proper advance written notice of its intention to contract out said work and failed to make a good-faith effort to reduce the incidence of contracting out scope covered work and increase the use of their Maintenance of Way forces as required by Rule 52(a) and the December 11, 1981 Letter of Understanding.
3. As consequence of the violations referred to in Parts (1) and/or (2) above, furloughed B&B Carpenter W. S. Wallace and B&B Carpenter T. D. Stalder shall each be allowed eight (8) hours' pay at the B&B First Class Carpenter's straight time rate.

FINDINGS:

On July 9, 1992, the Carrier used an outside contractor to remove and relocate a large overhead door at the south and north end of the breezeway next to Building 30 at Pocatello, Idaho.

The Organization took exception to the use of an outside contractor and filed a claim arguing that this type of work has historically and customarily been performed by B&B carpenters.

The Carrier denied the claim contending that the two Claimants were fully employed on other projects on the date in question. Furthermore, it argued that work such as this has been contracted out in the past.

The parties not being able to resolve the issues, this matter came before this Board.

This Board has reviewed the extensive record in this case and we find that on March 25, 1992, the Carrier issued a notice to the Organization's General Chairman informing him that the Carrier intended to solicit bids to cover the construction of a new shipping and receiving area for Building 34-A at Pocatello, Idaho. The Carrier informed the Organization that that work would include the construction of a dock, furnishing and installation of an overhead door, furnishing and installation of a 12' x 24' dock cover, and all other related work. In that notice, the Carrier's Assistant Director of Labor Relations indicated that he would be willing to conference the notice within the next 15 days.

The record further reveals that on March 30, 1992, the Organization responded to the Carrier's notice with its usual objections. The Carrier replied to the Organization's response on April 7, 1992. The Carrier contended that the work had traditionally been contracted by the Carrier but it stated further that it would be willing to meet with the Organization to discuss it.

The record further reveals that the conference did take place on April 13, 1992. The April 16, 1992 letter to the General Chairman indicates that "the matter remains unresolved".

A thorough review of the record reveals that the work was performed by the

outside forces beginning on June 9, 1992. Consequently, the notice and conference took place on a timely basis in compliance with the terms of the Agreement.

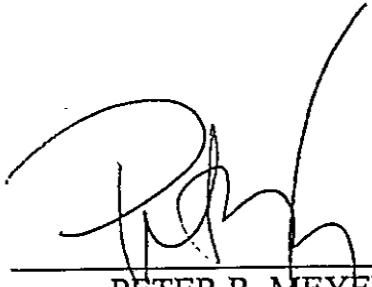
The Organization's major objection in this case is that the notice was improper because it did not apply to the work that was actually performed. The Organization also claims that none of the reasons for the work as specified in Rule 52 were included in the notice. Finally, the Organization claims that the building construction repair work of the character involved had customarily and traditionally been assigned to the Organization's employees.

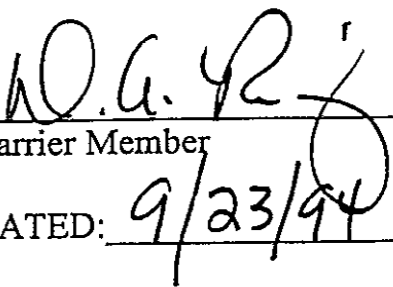
This Board has reviewed all of the arguments of the Organization in this case, and we find that the Organization has not met its burden of proof that the Carrier was in violation of the Agreement when it subcontracted the work involved. We find that the Carrier served proper notice of its intent to subcontract, and the Carrier had an established past practice of subcontracting this type of work. Moreover, the Organization has not met its burden of proof that the Carrier had Maintenance of Way forces available to perform the work. Finally, there is no showing that the Claimants suffered any monetary loss as a result of the action that was taken by the Carrier.

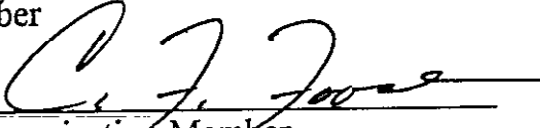
For all of the above reasons, the claim must be denied.

AWARD

Claim denied.



PETER R. MEYERS
Neutral Member

Carrier MemberDATED: 9/23/94

Organization MemberDATED: 9-30-94