

PUBLIC LAW BOARD NO. 5606

**PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
) DIVISION OF THE INT'L BROTHERHOOD OF TEAMSTERS
 TO)
DISPUTE) SPRINGFIELD TERMINAL RAILWAY COMPANY**

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- 1. The Carrier violated the Agreement when it assigned outside forces to perform Maintenance of Way work (dismantling of yard tracks) in Rigby Yard, South Portland, Maine, beginning May 4 through May 7, 2004.**
- 2. The Agreement was further violated when the Carrier failed to provide the General Chairman advance written notice of its plans to contract out the above-described work as stipulated in Article 3.**
- 3. As a consequence of the violation referred to in Parts (1) and (2) above, furloughed Foreman Timothy A. Smith, Sr., furloughed Equipment Operator Paul L. Jackson and furloughed Trackmen Brian S. Miles and John B. Sanborn, Jr., compensation as set forth in claims as filed on the property. (Carrier File MW-04-28, et al)**

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over the dispute involved herein; and, the parties were given due notice of hearing thereon.

The Organization contends that the Carrier violated the current Rules Agreement when, without proper notice of contracting out, it had employees of an outside contractor dismantle tracks and switches in Rigby Yard. It alleges that the work performed by the contractor forces is specifically reserved to Claimants under the ST/BMWE Agreement. The Organization also claims that certain materials were marked by the Carrier that were not a part of the sale and that the "removal, stacking, loading, unloading, etc., of those materials" by the contractor was and is Maintenance of Way work, and thus constitutes further violation of the ST/BMWE Agreement.

In this latter respect, the Organization says that the Carrier subsequently used some of the materials that were left behind, or set aside, including the use of some materials for the rebuilding of a switch in Rigby Yard, and that such actions support the conclusion that the contractor was permitted to perform work reserved to Claimants.

The Carrier submits that it entered into a Purchase and Sale Agreement on April 27, 2004 with Pohl Constructions whereby it agreed to sell what is defined in the agreement as "Railroad Materials." As a condition of the agreement, the Carrier says, Pohl agreed to purchase the railroad materials on an "as is – where is" condition, and, further, that Pohl would be responsible for removing the purchased materials. The railroad materials covered by the agreement were said by the Carrier to have been specifically marked in order to help identify them for Pohl.

Under the above circumstances, the Carrier says since it no longer owned the materials, it did not contract out any "work" coming under the ST/BMWE Agreement.

The Purchase and Sale Agreement defined the sale to include: "The collective process of cutting, collecting, loading, weighing, removing and disposal of the Railroad Materials from the Premises."

In study of the record the Board finds it worthy of note that the Carrier made the following unrefuted statement in its denial of the claim on the property:

Pohl did not "sort," "load," "unload" or "etc." the materials that were retained by the Carrier. No sorting was necessary since the materials had been previously marked by the Carrier. The Carrier's materials were not loaded or unloaded by Pohl, because the materials remained at the same location. Carrier management further asserts that Pohl left the area in complete disarray once it had pulled up and removed its materials. The Carrier's property was not carefully or neatly set aside, as Pohl was only concerned with taking its scrap and leaving the area. Pohl had no incentive to perform any "work" for the Carrier. Moreover, the on-site supervisor attests to the fact that maintenance of way forces were used to pick up the materials that were left behind/retained by the Carrier. Local management has advised that, at present, there is one small pile of tie plates on the property, which could theoretically be characterized as "stacked," as opposed to being thrown into a "pile." However, Labor Relations has been informed that these tie plates are not marked with paint, which means one of two things. Either (1) these tie plates are not related to the present dispute, since the materials retained by the Carrier had been marked with paint, or (2) these tie plates were part of the

transaction, but rightfully belong to Pohl since they are not marked. Nevertheless, it is reiterated that the Carrier did not ask, instruct, or authorize Pohl to "stack" said tie plates.

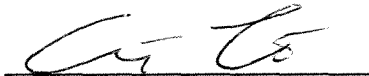
In the opinion of the Board, it being evident in study of the record that the Carrier had a unilateral right to enter into an agreement with an independent contractor for the sale of certain rail and switch track on an "as is – where is" basis, retaining for its own use certain materials associated with the sale, and nothing of record showing that the Carrier had contracted or instructed the contractor to stack materials that were disturbed in connection with the contractor removing its purchased property, and to be left behind, the Board finds no basis to hold that there was a violation of the current ST/BMWE Agreement.

AWARD:

Claim denied.



Robert E. Peterson
Chair & Neutral Member



Anthony F. Lomanto
Carrier Member



Stuart A. Hulburt, Jr.
Organization Member

North Billerica, MA

Dated 10/27/06