

PUBLIC LAW BOARD NO. 5652

PARTIES) **BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**
TO)
DISPUTE) **UNION PACIFIC RAILROAD COMPANY (FORMER MISSOURI**
 PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM

1. The Agreement was violated when the Carrier assigned outside forces (Ronnie Wall, Inc.) to perform Maintenance of Way work, haul, dump and spread ballast, line a switch and turnout, clean up old switch and turnout, load, stack and haul old ties, put in and haul off old rail and do general clean up work around the main line at Mile Post 51 in Jefferson, Texas, beginning July 5, 1990 (Carrier's File 900614 MPR).
2. The Carrier also violated Article IV of the May 17, 1968 National Agreement when it failed to furnish the General Chairman with a proper advance written notice of its intention to contract out said work.
3. As a consequence of the violations referred to in Parts (1) and/or (2) above, Red River employees R. E. Smith, W. P. Robinson, J. H. Moore and Billy Goodwyn shall each be compensated for all time worked by the contractor's employees beginning July 5,

1990 and continuing until the project was completed.

OPINION OF BOARD

By letter dated February 13, 1990, the Carrier informed the Organization as follows:

This is to advise of the Carrier's intent to solicit bids to contract the pick up and disposal of scrap ties and debris from the Carrier's Tie Program as follows:

Van Buren Sub	MP 512.00 - MP 628.00
Monroe Sub.	MP 439.00 - MP 598.00
Midland Valley Br.	MP 49.00 - MP 97.00
Dallas Sub.	MP 41.00 - MP 82.00
Dallas Sub.	MP 139.00 - MP 203.50
Corpus Christi	MP 39.00 - MP 88.00

Also, from Yard Rehab. Programs at Memphis; on the Ste. Genevieve Branch; Lesperance; and Sparta.

* * *

Conference was held on February 16, 1990 with the Organization objecting to the contracting out of the noticed work. The contracted work in dispute commenced July 5, 1990 and was performed by Ronnie Wall, Inc. As alleged in the claim, the contracted work included hauling, dumping, spreading ballast, lining a switch and turnout, clean up old

switch and turnout, load, stack and haul old ties, put in and haul off old rail and general clean up work around the main line.

The general principles governing contracting out cases for the Carrier are found in *Award 1* of this Board.

Article IV of the 1968 Agreement states:

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.

* * *

For reasons discussed in *Award 1* of this Board (i.e., because the work was scope covered), the Carrier was obligated to give the Organization notice of its intent to contract out the work in dispute. We agree with the Organization that the Carrier's February 13, 1990 notice was not "proper". The work actually contracted out exceeded the type of work described in the Carrier's February 13, 1990 notice.

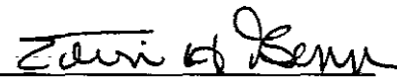
For reasons discussed in *Award 1*, we shall therefore sustain the claim. For similar reasons, make whole relief shall be awarded, but only to those Claimants on furlough, if any, during the time the

contractor performed the work in dispute. However, in this case, because the notice covered some of the disputed work, the Carrier shall be entitled to credit for any work that fell within the description of its notice ("pick up and disposal of scrap ties and debris").

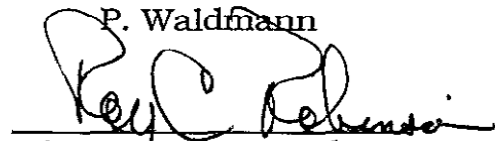
The matter is remanded to the parties for a joint check of the Carrier's records to determine which Claimants, if any, were on furlough during the time the contractor performed the work and the degree of work performed beyond that specifically set forth in the notice.

AWARD

Claim sustained in accord with the opinion.


Edwin H. Benn
Neutral Member


Carrier Member
P. Waldmann


Organization Member
R. C. Robinson

Chicago, Illinois

Dated: January 9, 1992