

PUBLIC LAW BOARD NO. 5652

PARTIES) **BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**
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 (Cochran Contractors) to perform Maintenance of Way work, remove and install a new roof on the north end of the depot at Poplar Bluff, Missouri, beginning July 9, 1990 (Carrier's File 900697 MPR).
2. The Carrier also violated Article IV of the May 17, 1968 National Agreement when it failed to furnish the General Chairman with 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, the Missouri Division employees listed below* shall each be allowed payment of all wage loss suffered at their time and one-half rates for the time worked by the outside contractor.

* Foremen
T. A. Bader
R. Bowle

Motor Car Operators

C. W. Briley
B. J. Ventrulli

Mechanics

H. G. Zaricor
C. R. Lewis
P. V. Hirtz
S. G. Kerperien
C. A. Bader
C. L. Weidenbenner

OPINION OF BOARD

Without prior notice to the Organization, the Carrier contracted roof repair work at Poplar Bluff, Missouri to Cochran Contractors.

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

Roof repair work is scope covered and, under ordinary circumstances, Article IV of the 1968 Agreement requires notice of contracting out such work to be given to the Organization. The Carrier asserts that notice was not required in this case due to the emergency nature of damages from a storm and the exposure of contents in the depot and

that B&B forces were not available on the dates in the claim.

The burden for demonstrating the existence of such an emergency rests with the Carrier. That burden has not been met.

While the Carrier's assertion of storm damage and exposure of contents in the depot could lead to the conclusion that an emergency existed, the Organization refuted that assertion in this case by pointing out that covered employees put plastic on the damaged area nearly three weeks before the contractor was brought in and a gang was tying up at the south end of the depot opposite where the contracted work was being performed on the north end. Coupled with the fact that the record is not clear concerning when the storm occurred in relation to when the contractor actually began working, in light of the assertions by the Organization, we find that the Carrier has not sufficiently demonstrated the existence of an emergency.

The statement of Manager K. Hunt offered by the Carrier does not change the result. That statement asserts that "Due to the emergency nature of work i.e. roof damage due to storm and the exposure of loss of contents of depot at Poplar Bluff,

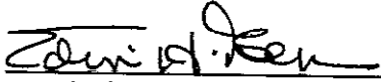
contractor was *hired* within 2 days of initial damage to make repairs." [emphasis added]. When the contractor was "hired" and when the contractor actually commenced "work" are different matters. The Carrier's burden in this case requires it to show that the work was commenced immediately in light of the conditions and that covered employees were, in fact, not available. The status of the record does not allow for such conclusions.

By failing to give notice, the Carrier violated Article IV of the 1968 Agreement. 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.

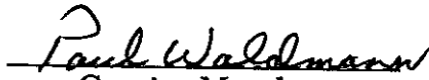
The matter is remanded to the parties for a joint check of the Carrier's records to determine which Claimants, if any, were on furlough during the time the contractor performed the work.

AWARD

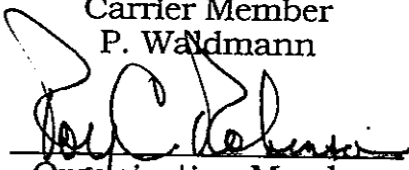
Claim sustained in accord with
the opinion.



Edwin H. Benn
Neutral Member



Carrier Member
P. Waldmann



Organization Member
R. C. Robinson

Chicago, Illinois

Dated: January 9, 1997