

PUBLIC LAW BOARD NO. 6205
AWARD NO. 15
CASE NO. 15

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

PARTIES

TO DISPUTE:

and

UNION PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier assigned outside forces (North Platte Lumber and Thurston and Allen Construction) to perform basic Bridge and Building Subdepartment work (constructing an office and a classroom) at the Diesel Shop in North Platte, Nebraska beginning December 14, 1992 through January 22, 1993 (System File H-36/930374).

(2) The Agreement was further violated when the Carrier assigned outside forces (North Platte Lumber and Troyer Enterprises) to perform basic Bridge and Building Subdepartment work (constructing a steel support structure for a classroom and a footwalk) at the Diesel Shop in North Platte, Nebraska beginning January 18 through 29, 1993 (System File H-35/930379).

(3) The Agreement was further violated when the Carrier failed to furnish the General Chairman with proper advance written notice of its intention to contract out said work and make a good-faith attempt to reach an understanding concerning said contracting as required by Rule 52.

(4) As a consequence of the violations referred to in Parts

(1) and/or (3) above, B&B Carpenters J. A. Albertz, A. J. Huaracha and P. P. Herrera shall each be compensated at the carpenter's straight time rate for an equal proportionate share of the total number of man-hours expended by the outside forces in performance of the work involved.

(5) As a consequence of the violations referred to in Parts (2) and/or (3) above, B&B Group 1 Steel Erection Welders J. Callahan and R. K. Hughes shall each be compensated at their respective straight time rates for an equal proportionate share of the total number of man-hours expended by the outside forces in performance of the work involved."

FINDINGS:

Upon the whole record, after hearing, this Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

By notice dated August 25, 1992, Carrier advised the Organization of its intent to solicit bids to cover "the following work to be done at the North Platte Locomotive Servicing Facility: (1) Construction of a 12-foot by 15-foot zone manager's office at the Diesel Shop; and (2) Construction of a 11-foot by 28-foot building south of the Diesel Office for classroom building." In its notice Carrier asserted its availability to conference the notice within the next 15 days. By letter dated September 1, 1992, the Organization objected to Carrier's intent to contract the work, relying upon Rules 1 and 8 as reserving the work to employees and referencing prior employee written statements furnished to Carrier in another specified file establishing the fact that employees have customarily performed this type of work and are skilled at doing so. The Organization requested the

scheduling of a conference prior to the work being performed.

Carrier responded on September 4, 1992, noting that it had a practice of contracting out this type of work, and indicated a willingness to meet, suggesting that the matter be set on the agenda for the next conference on contracting notices. A conference was held on September 14, 1992 without resolution.

In its claim filed on February 8, 1993, the Organization argues that the work in question is specifically reserved to employees by Rules 1 and 8 of the Agreement, and has customarily and historically been performed by them, submitting employee statements supporting this contention. In its correspondence on the property, the Organization avers that the scope of the project was not beyond the capabilities of its employees and provides pictures of other large construction projects they have performed, takes issue with Carrier's evidence of past practice, and argues that a full monetary remedy is appropriate for loss of work opportunity regardless of whether Claimants were fully employed.

Carrier argued throughout the claims processing that the Scope rule was general in nature and did not specifically reserve this type of work to employees under the Agreement. Carrier presented evidence of an extensive past practice of contracting building construction and remodeling and relies on prior precedent establishing its right to contract out this type of work under the "prior existing rights" language in Rule 52(b). See, e.g. Third Division Award 28610. Carrier also argues that the claim is excessive since the Organization failed to show that Claimants suffered any loss as a result of the contracting. Finally, Carrier asserts that it fulfilled its notice and conference obligations under Rule 52.

Initially we find that Carrier satisfied its notice and conference obligations in this case. Notice was served on August 25, 1992 and conference held on September 14, 1992. The work in issue did not commence until December 14, 1992. Thus, as the notice was served over 15 days prior to the contracting and the conference was held some three months before the disputed work began, we find that Carrier did not violate its obligations under Rule 52(a) herein.

The ability of Carrier to contract out building construction and remodeling work on this property has been upheld in Third Division Awards 32859, 32534, 32367, 32324, 32323, 32322, 31284, 30869, 30198, 30185, 29717, 29715, 29544, 29186, 28610; PLB No. 5546, Awards 1, 7, 8, 10, 11, 12. Given the practice established on this property for the kind of contracting involved in this case, there is no basis for determining that these Awards are palpably erroneous, and in the interest of stability, we shall follow them. Based upon the evidence of past practice established in this record, as well as this prior precedent, we find that the "prior and existing rights and practices" language in Rule 52(b) permits the contracting involved herein.

AWARD:

The claim is denied.

Margo R. Newman

Margo R. Newman
Neutral Chairperson

Dominic A. Ring

Dominic A. Ring
Carrier Member

Rick B. Wehrli

Rick B. Wehrli
Employee Member

Dated: _____

Dated: 7-5-00