

AWARD NO. 4
CASE NO. 4

PUBLIC LAW BOARD NO. 6218

PARTIES) **BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**
TO)
DISPUTE) **UNION PACIFIC RAILROAD COMPANY (FORMER MISSOURI**
 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 (M&K Track Work) to load and haul 25,000 ties and tie plates on the Midland Valley Division between Mile Posts 39.5 and 89 between Stigler and Muskogee, Oklahoma beginning June 14 and continuing through August 5, 1993 (Carrier's File 930670 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, Midland Valley Foreman J. L. Gilstrap, Trackman L. D. Hurst and truck Driver F. D. Smith shall

each be allowed pay at their respective straight time and time and one-half rates for an equal proportionate share of the total number of man hours expended by the outside forces performing the work in question during the period of June 14 through August 5, 1993.

OPINION OF BOARD

For reasons discussed in *Awards 1 and 2* of this Board, the Carrier's exclusivity arguments are rejected.

While the Organization claimed that notice was not given, the record shows that the Carrier advised the Organization by letter dated February 10, 1993 of its intent to contract the work of "remove trackage, appurtenances, and bridges from Railroad's Midland Valley Branch". The record further shows that by letter dated February 17, 1993, the Organization acknowledged receipt of the notice. The record also shows, in accord with a

letter dated August 9, 1994 from the Organization that the matter was "... discussed in conference February 16, 1993", without resolution. In its Submission at 6, the Organization acknowledges that notice was sent and conference was held.¹ The Carrier therefore met its notice and conference obligations under Article IV.²

¹ According to the Organization "[u]nder date of February 10, 1993, the Carrier presented the General Chairman with a typically generic letter advising of its: 'intent to solicit bids to contract the following work'" Organization Submission at 6.

² See *Third Division Award 32862* where the Carrier's notice obligations were discussed:

From the handling of the hundreds of claims presented to this Board between the parties on the issue of contracting work, we are also cognizant that the notice, objection by the Organization and conference procedure often is a pro forma exercise which ends up in a literal battle of word processors and copy machines as the parties posture themselves on the issues and put together the voluminous records in these cases. Our function is not to make certain that the process is a meaningful one — that is the obligation of the parties. Our function is to enforce the language the parties agreed upon. The Carrier's course of action now is a straight forward one — simply give notice where the work arguably falls "within the scope of the applicable schedule agreement". If it does so, the Carrier will not be faced with the kind of remedy imposed in this case because it failed to give notice.

The Carrier gave the appropriate notice in this case.

With respect to the merits, the evidence shows that in the past the Carrier has contracted out the kind of work involved in this dispute. According to the Carrier's February 10, 1993 letter, "[t]his is the type of work that has customarily and traditionally been performed by outside contractor's forces." With respect to that assertion, see *Third Division Award 32746* involving a claim that the Carrier improperly contracted out the picking up of crossties³:

As to the merits of the contracting action, on the property in its June 10, 1991 letter, the Organization stated that "[t]he fact is the Organization has long acquiesced to this work without benefit of notice and it is only in the last few years that any claims have been progressed ..." Therefore, the record establishes that this kind of work has been contracted in the past without objection by the Organization. Further, this claim involves the same kind of work resulting in denials of claims by this Board where we found that "in the past the Carrier has contracted out similar work which has been acquiesced to by the Organization." *Third Division Awards 31277, 31273*. See also, *Third Division Award 32745*. Those awards govern this dispute.

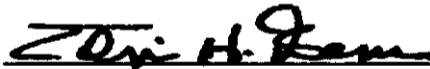
The rationale in *Award 32746* governs this case. See also, *Award 1*

³ The Carrier's notice in *Award 32746* addressed "... the removal of trackage and appurtenances on the Oklahoma Subdivision between Muskogee, Oklahoma ... and KOG Junction, Oklahoma ..." — work similar to that involved in this dispute.

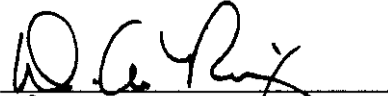
of this Board. The claim shall be
denied.

AWARD

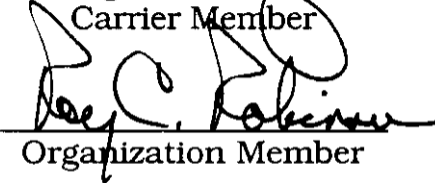
Claim denied.



Edwin H. Benn
Neutral Member



Carrier Member



Organization Member

Chicago, Illinois

Dated: 7/31/02