

PUBLIC LAW BOARD NO. 6249

PARTIES)	BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
TO)	
DISPUTE)	UNION PACIFIC RAILROAD COMPANY (FORMER SOUTHERN PACIFIC TRANSPORTATION COMPANY (EASTERN LINES))

STATEMENT OF CLAIM

Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier assigned outside forces (D&S Hydro-Ax Company) to perform Maintenance of Way work (cutting vegetation) from Mile Post 270 at West Pine Bluff to Mile Post 320 at Bearden, Arkansas from September 3 through October 7, 1996 (System File MW-97-8-CB/BMW 97-111).

2. The Agreement was further violated when the Carrier failed to furnish the General Chairman with fifteen (15) days' advance written notice of its plan to contract out the above-described work in accordance with Article 33.

3. As a consequence of the violations referred to in Parts (1) and/or (2) above, Machine Operators W. Neal, Jr. and J. L. Haynes shall each be allowed two hundred (200) hours' pay at their respective

straight time rates and one hundred seventeen and one-half (117.5) hours' pay at their time and one-half rates for the time consumed by the outside forces in the performance of the work in question.

OPINION OF BOARD

The Organization asserts that the Carrier contracted vegetation cutting work to an outside contractor without prior notice in violation of Article 33 and the December 11, 1981 Letter of Agreement.

A November 18, 1996 statement from Roadmaster R. L. Griffin stated as follows:

We used D & S Hydro-Ax services to clear site distance on public & state road crossing from West Pine Bluff, AR. to Bearden, AR. We are now required by state law to maintain a 300 ft. clear site distance on each side of a road crossing, including both sides of the track.

Railroad has not done this in the past except in a few select places where a on track brush cutter may have been working on a roadmasters district.

D&S Hydro-Ax has special made equipment that is off the track. It is able to clean brush & trees all the way out to our property lines, which is what is required by law. Railroad does not have any of this type equipment & has never had this type equipment on the division or elsewhere to our knowledge.

Our on track brush cutter will be used to cut the areas where the Hydro-Ax could not reach up close to the track structure.

I did not put out the 15 day notice to the Union because we have not ever had this type of equipment in our off track railroad equipment. I am quite sure we will be using this type of contract equipment again in the future as it is the only way we can maintain a clear site distance to our right of way property lines.

Third Division Award 31668 denied a similar claim involving contracting of this type of work:

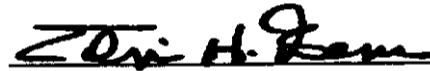
Inasmuch as the Carrier has shown that it has contracted with Asplundh for the control of weed and vegetation along its right-of-way since 1986, the Organization has failed to show the work is within the scope of the Agreement.

In *Award 6* of this Board, we followed *Award 31668* as not being palpably in error. The rationale in *Award 6* which deferred to *Award 31668* is equally applicable in this case. Further, the Carrier's assertion concerning the lack of its prior performance of this specific type of work is added justification for denying the claim under the rationale of *Award 6* and *Award 31668*

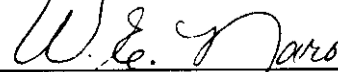
that the disputed work performed by the contractor is not scope covered.

AWARD

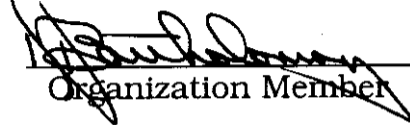
Claim denied.



Edwin H. Benn
Neutral Member



Carrier Member



Organization Member

Dated: 7-24-02