

PUBLIC LAW BOARD 6430

Award No. 7

Case No. 7

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

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 (A&K Materials) to perform Maintenance of Way work (cut, load, transport and stockpile rail) between Mile Posts 392 and 406 on the Nebraska Division commencing March 18, 1998 and concluding on May 1, 1998 (System File W-9852-151/1138973).
2. 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 failed to make a good-faith attempt to reach an understanding concerning said contracting as required by Rule 52(a).
3. As a consequence of the violations referred to in Parts (1) and/or (2) above, Eastern District Roadway Equipment Operator C. A. Stoll, Nebraska Division Group 15(D) Truck Drivers J. D. Woodward, C. A. Powell, Group 15(C) Truck Drivers H. J. Swanson, K. A. Fleeman, Group 10 Machine Operator J. A. Daedler, Group 14(F) Welder Helpers R. P. Gruber and J. M. Becker **** must each be allowed an equal proportionate share of the man hours worked by the outside contracting force as described in this claim, at their respective Seniority Groups Straight Time and Overtime rates of pay as compensation for the violation of the Agreement for hours worked by the outside contracting force in cleaning the Right of Way of Scrap rail. This claim for compensation includes that Claimants be

compensated for the loss in what is normally considered overtime hours for Maintenance of Way Employees.'

FINDINGS:

This Board, upon the whole record and all of the evidence, finds and holds as follows:

1. That the Carrier and the Employees involved in this dispute are, respectively, Carrier and Employees within the meaning of the Railway Labor Act, as amended;; and

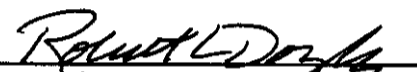
2. That the Board has jurisdiction over this dispute.

OPINION OF THE BOARD:

A careful review of the record indicates that the present dispute involves an alleged "as is, where is" transaction. The present record substantiates that the Carrier did not retain the relevant material. As a result, an "as is, where is" transaction occurred and the Carrier did not violate the collective bargaining agreement by permitting the outside vendor to send outside forces to retrieve the material.


AWARD:

The Claim is denied.


Robert L. Douglas
Chairman and Neutral Member


D. D. Bartholomay
Employee Member

Dated: 9/9/2002


D. A. Ring
Carrier Member