

PUBLIC LAW BOARD 6430

Award No. 10

Case No. 10

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 (Gruber and Flamingo Trucking) to perform Maintenance of Way work (unload and transport ballast) at Lawrence, Kansas to various locations in the vicinity of Topeka, Kansas on April 24 and 25, 1998 (System File W-9852-155/1143544).
2. The Agreement was further violated when the Carrier failed to furnish the General Chairman with a proper advance written notice of its intention to contract out said work and failed to make a good-faith effort to reduce the incidence of contracting out scope covered work and increase the use of its Maintenance of Way forces as required by Rule 52 and the December 11, 1981 Letter of Understanding.
3. As a consequence of the violations referred to in Parts (1) and/or (2) above, Eastern District Roadway Equipment Operators A. E. Emperley, L. J. Doebele, Jr. and Kansas Division Group 15 Truck Drivers T. W. Brummett, L. B. Brumbaugh, R. A. Gosser, R. D. Creek and V. E. O'Toole shall each be compensated for an equal proportionate share of the total number of man-hours expended by the outside forces in the performance of the work in question at their respective Groups 19 and 15 straight time rates and time and one-half rates of pay.

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 Organization first filed a claim, dated June 1, 1998, on behalf of the seven employees named above. The original claim involved the following work:

Unloading and Loading ballast from railcars at Lawrence, Kansas and transporting ballast to various location around Topeka, Kansas and stockpiling ballast at Grantsville, Kansas.

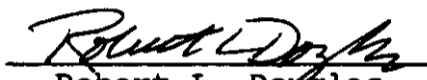
(Employee's Exhibit A-1 at sheet 1 of 4 and Carrier's Exhibit B-1 at page 1 of 7.) The record further reflects that the Organization subsequently appealed the claim to the Carrier's highest designated officer as reflected in a letter dated March 31, 1999. The March 31, 1999 letter of appeal described the relevant work as follows:

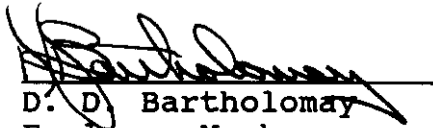
crossing locations in the Topeka, Kansas area as well as various other crossing locations.

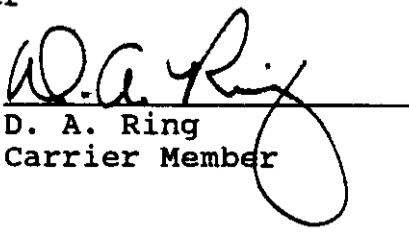
(Employee's Exhibit A-7 at sheet 1 of 2 and Carrier's Exhibit B-7 at page 1 of 4.) These different descriptions of the disputed work reflect that the Organization in effect amended the claim. Under this unusual circumstance, the Board has no choice but to dismiss the claim as untimely.

AWARD:

The Claim is dismissed in accordance with the Opinion of the Board.


Robert L. Douglas
Chairman and Neutral Member


D. D. Bartholomay
Employee Member


D. A. Ring
Carrier Member

Dated: 9/9/2002