

PUBLIC LAW BOARD NO. 7096

PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
TO)
DISPUTE) UNION PACIFIC RAILROAD COMPANY (FORMER CHICAGO
) NORTHWESTERN TRANSPORTATION COMPANY)

STATEMENT OF CLAIM

Claim of the System Committee
of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned outside forces (ConStruct) to perform Maintenance of Way and Structures Department work (cutting and grading work) on the right of way in the vicinity of Mile Post 66.5 on the Clinton Subdivision beginning March 2, 2005 and continuing (System file 4RM-9651T/1425081 CNW).
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with a proper advance notice of its intent to contract out the above-referenced work or make a good-faith attempt to reach an understanding concerning such contracting as required by Rule 1(b).
- (3) As a consequence of the violation referred to in Parts (1) and/or (2) above, Claimants J. Hasler, W. Harrington, D. Bartachek, R. Jacobi and T. Eyerly shall now each

be compensated at their applicable rates of pay for an equal and proportionate share of the total straight time and overtime man-hours expended by the outside forces in the performance of the aforesaid work beginning March 2, 2005 and continuing.

OPINION OF BOARD

Without prior notice to the Organization, the Carrier contracted out the disputed work set forth in the clam.

Rule 1(B) provides, in pertinent part:

... In the event the Company plans to contract out work because of one of the criteria described herein, it shall notify the General Chairman of the Brotherhood in writing as far in advance of the date of the contracting transaction as is practicable and in any event not less than fifteen (15) days prior thereto, except in "emergency time requirements" cases. If the General Chairman, or his representative, requests a meeting to discuss matters relating to the said contracting transaction, the designated representative of the Company shall promptly meet with him for that purpose. The Company and the Brotherhood representa-

tives shall make a good faith attempt to reach an understanding concerning said contracting, but if no understanding is reached, the Company may nevertheless proceed with said contracting and the Brotherhood may file and progress claims in connection therewith.

Because the Carrier failed to notify the Organization of its intent to contract the work in dispute as required by Rule 1(B), the conference procedure established by the Agreement was frustrated. *See Award 1* of this Board (where the notice issued on the day the outside forces began working) quoting *Third Division Award 32862*:

... [O]ur function is to enforce language negotiated by the parties. In Article IV and as a result of negotiations, the parties set forth a process of notification and conference in contracting disputes. The Carrier's failure to follow that negotiated procedure renders that negotiated language meaningless. This Board's function is to protect that negotiated process. Our discretion for fashioning remedies includes the ability to construct make whole relief. The covered employees as a whole are harmed when the Carrier takes action inconsistent with the obligations of the Agreement (here, notice) to contract work within the scope of the Agreement. ...

The same rationale applies here. The notice was given by the Carrier on the day the outside forces commenced work; the work under this claim was completed before the parties held a conference; and, as a re-

sult, the Organization was given no opportunity to use the conference established by Rule 1(B) to attempt to reach an understanding with the Carrier to attempt to prevent the contracting of the work. If, as the Carrier argues, there were special circumstances concerning the work (e.g., equipment not possessed by the Carrier, special qualifications for use of certain chemicals, etc.) which would otherwise permit the Carrier to contract the work under Rule 1(B), those circumstances could have been discussed with the Organization in conference after timely notice. However, that process was not allowed to unfold because the Carrier failed to give timely notice as required by Rule 1(B).

The end result was that because of the Carrier's failure to give timely notice under Rule 1(B) and the frustrating of the notice and conference provisions in that rule, Claimants lost overtime opportunities. With the frustrating of the notice and conference procedures resulting from the Carrier's failure to give timely notice, make whole relief for those lost work opportunities is therefore appropriate. Claimants shall be made whole for the lost work opportunities based upon the number of hours worked by the contractor on the dates in dispute.

For the same reasons, this claim will be sustained and make whole relief required for the lost work opportunities.

AWARD

Claim sustained.

Edwin H. Benn

Edwin H. Benn
Neutral Member

D. A. Ring

D. A. Ring
Carrier Member

R. C. Robinson

R. C. Robinson
Organization Member

Chicago, Illinois

Dated: March 18, 2008