

**PUBLIC LAW BOARD NO. 7201
CASE NO. 8**

PARTIES TO THE DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(and
(
(Soo Line Railroad Company (former Chicago,
Milwaukee, St. Paul and Pacific Railroad
Company)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
that:

(1) The Agreement was violated with the Carrier assigned outside forces (Century Fence) to perform Bridge and Building Subdepartment work (construct a chain link fence and related work) upon the right of way in the vicinity of Mile Post 107.1 on the Watertown Subdivision south of Milwaukee, Wisconsin on November 29, 30, December 3 and 4, 2001 instead of Messrs. R. Bowers, K. Popp, G. Brinkmeier and R. Bean (System File C-42-01-C080-13/8-00228-066 CMP).

(2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with proper advance written notice of its intent to contract said work as required by Rule 1 and failed to enter good-faith discussions to reduce the use of contractors and increase the use of the Maintenance of Way forces as set forth in Appendix I.

(3) The claim as presented by General Chairman M. S. Wimmer on January 16, 2002 to Engineering Services Manager R. Wedel shall be allowed as presented because said claim was not disallowed in accordance with Rule 47(a).

(4) As a consequence of the violations referred to in Parts (1), (2) and/or (3) above, Claimants R. Bowers, K. Popp, G. Brinkmeier, and R. Bean shall now each be compensated for thirty-one and one-quarter (31.25) hours' pay at their respective straight time rates of pay."

FINDINGS:

The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by Agreement; this Board has jurisdiction over the dispute involved herein; and that the parties were given due notice of the Hearing held.

Claimant R. Bowers, K. Popp, G. Brinkemier and R. Bean have established and hold seniority in the Bridge and Building B&B Sub-department. All were regularly assigned and working positions in their respective classes on System B&B Crew #47D and #46E on the date that the instant dispute arose.

The Claim was presented on January 16, 2002 on behalf of employees Robert Bowers, Keith Popp, Greg Brinkmeier and Robert Bean for 125 hours total for Carrier's assigning and utilizing an outside contractor to construct and erect approximately 1000 feet of chain link fence upon the Carrier's right of way at Mile Post 107.1 on the Watertown Subdivision on November 29, 30 and December 3 and 4, 2001. Carrier denied the Claim on March 13, 2002 confirming that Notification was provided on March 24, 2000 and a conference was conducted with the General Chairman. According to the Carrier, the fence was required for safety reasons and as part of the settlement that led to the construction of the Pedestrian Underpass. According to the Carrier, for safety and warranty reasons, it was necessary that construction of the fence was handled by an outside company.

The Organization contends that the Agreement was violated when the Carrier assigned Century Fence the work of constructing a chain link fence upon the right of way in the vicinity of Mile Post 107.1 on the Watertown Subdivision. The Organization claims that it was improper for the Carrier to contract out the above-mentioned work, which is work that is properly reserved to the Organization.

According to the Organization, the Carrier had customarily assigned work of this nature to the Carrier's Maintenance of Way Employees. The Organization further claims that the work in question is consistent with the Scope Rule. According to the Organization, the Carrier's Maintenance of Way Employees were fully qualified and capable of performing the designated work. The work performed by Century Fencing falls within the jurisdiction of the Organization and therefore Claimants should have performed said work. The Organization argues that because Claimants were denied the opportunity to perform the relevant work, Claimants should be compensated for the lost work opportunities. In addition, the Organization claims that because the Claim was not responded to within the 60 days required by Rule 47, the Claim must be allowed as presented.

Conversely, the Carrier takes the position that the Organization cannot meet its burden of proof in this matter. The Carrier contends that the work contracted out does not belong to the Carrier's BMWWE represented Employees under either the express language of the Scope Rule or any binding past practice. In addition, the Carrier takes the position that the Claim was responded to within the 60-day time period and therefore, it is not procedurally flawed.

We have reviewed the language of Rule 47 which provides as follows:

Rule 47

Time Limit - Claims or Grievances

1. All claims or grievances shall be handled as follows:

(a) All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed, the Carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employee or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances.

In the instant case, we have reviewed the facts and find that the Carrier did not respond to the Claim within the required 60-day period. The Carrier received the Claim on January 18, 2002 and thus had until approximately March 18, 2002 to respond. However, the Claim was not officially responded to until the conference held on April 22, 2003, which was well beyond the required 60-day period. The Organization produced documentation within the proper time limitation to prove that the Carrier had not responded to the Claim in a timely manner. Therefore, the Carrier was in violation of the language of Rule 47. Because it did not respond within the 60-day period, the Claim shall be allowed as alleged. Claimants shall be made whole. The Claim is sustained.

The Claim is sustained.

AWARD

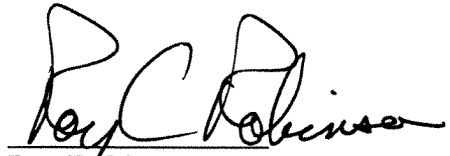
Claim sustained.

**Steven
Bierig**

Digitally signed by Steven Bierig
DN: cn=Steven Bierig, o,
ou=Attorney- Arbitrator-
Mediator,
email=arb438@comcast.net, c=US
Date: 2010.06.14 16:22:34 -05'00'

Steven M. Bierig
Chairperson and Neutral Member


Bjarne Henderson
Carrier Member


Roy Robinson
Organization Member

Dated at Chicago, Illinois this 14th day of June 2010.