AWARD NO. 13
CASE NO. 13

SPECIAL BOARD OF ADJUSTMENT NO. 1130

PARTIES TO DISPUTE	)	**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**
	)	
	)	**UNION PACIFIC RAILROAD COMPANY (FORMER MISSOURI 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 (W. T. Byler, Inc.) to perform routine Maintenance of Way machine operator work (operate backhoes to install crossings and switches) between Mile Posts 22 and 14 at Strang Yard beginning April 24 through May 19, 1998 to the exclusion of Machine Operators W. Williams, III and S. R. Tillman (System File MW-98-167/1148510 MPR).

2. The Agreement was further violated when the Carrier failed to furnish the General Chairman with proper advance notice of its intent to contract out said work or make a good-faith effort to reduce the amount of contracting, as provided in Article IV of the May 17, 1968 National Agreement and the December 11, 1981 Letter of Understanding.

3. As a consequence of the violations referred to in Parts (1) and/or (2) above, Machine Operators W. Williams, III and S. R. Tillman shall now each be compensated for one Hundred forty-four (144) hours' pay at their respective time and one-half rate of pay.

OPINION OF BOARD

By letter dated April 8, 1998, the Carrier notified the Organization that "[t]his is to advise of the intention of the Company to contract work to outside contractors from time to time at various locations - below ...." The notice then listed 28 locations on various subdivisions, yards, branches, lines and terminals. Mile post ranges were listed on 17 of the specified locations. The notice further stated that "[s]ome of the work to be performed will be tie removal, crossing renewal, drainage

work and vegetation control. Equipment that could be used is backhoe, dumptruck, dozer, bush-hog, chain saws, various type cranes, and operators."

Conference was held on April 13, 1998. The contractor began performing the work on April 24, 1998.

For reasons discussed in *Award 10* of this Board, because of the November 7, 1997 Implementing Agreement, the treatment of mixed practices for contracting out disputes on the Carrier as opposed to other predecessor properties shall govern.

Further, for reasons discussed in *Award 10* of this Board, the Carrier's argument that the Organization must demonstrate that covered employees must perform the disputed work on an exclusive basis is rejected. The disputed work — operating backhoes to install crossings and switches — is classic maintenance of way work and falls "within the scope of the applicable schedule agreement" as contemplated by Article IV.

The Carrier met its notice obligations under Article IV. Notice was given on April 8, 1998 and conference was held on April 13, 1998. The work involved in this case was performed within the geographic parameters specified in the notice (within the Houston Terminal).

The Organization's arguments do not show that the notice is deficient in terms of Article IV requirements. The notice lists locations and identifies the type of work to be performed and further identifies the equipment to be used. Nothing in Article IV requires more specificity than that provided by the Carrier in this notice. In terms of the notice, all that is required by Article IV is "[i]n the event a carrier plans to contract out work within the scope of the applicable schedule agreement, the carrier shall notify the General Chairman of the organization involved in writing as far in advance of the date of the contracting transaction as is practicable and in any event not less than 15 days prior thereto." That standard was met by the Carrier's notice in this case. The Organization was sufficiently put on notice of the Carrier's intentions in order to allow the Organization to adequately discuss the matter in a conference.[1]

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[1] *Third Division Award 25677* does not change the result. There, the Board found the notice inadequate reasoning "... the advance notice was tantamount to a general
[footnote continued]

With respect to the particular work in dispute, the evidence shows that in the past the Carrier has contracted out this type of work. The evidence further shows that covered employees have also performed this type of work. Given that demonstrated mixed practice and as we discussed in *Award 10*, the well-developed body of decisions involving the Carrier requires a finding that the Carrier did not violate the Agreement when it contracted out the disputed work.[2]

This claim shall be denied.

AWARD

Claim denied.

Edwin H. Benn
Neutral Member

Carrier Member

Organization Member

Chicago, Illinois

Dated: 7-29-02

[continuation of footnote]
blanket notice and not the type of notice contemplated by the Agreement." *See also, Third Division Awards 24242, 25103* and *26762* cited by the Organization. For reasons discussed above, we do not find the notice in this case to be an improper notice.

[2] In particular, *see Third Division Award 31275* where similar work was contracted out:

> As demonstrated by the correspondence on the property, the work performed by the contractor involved the use of a backhoe and a dump truck. The record further sufficiently establishes that in the past the Carrier has contracted out similar work which has been acquiesced to by the Organization. Under the circumstances, the claim will be denied.