

AWARD NO. 48
CASE NO. 48

SPECIAL BOARD OF ADJUSTMENT NO. 1130

PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
TO)
DISPUTE) 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 to perform routine Maintenance of Way machine operator work (operate backhoe to remove/install ties, rail, switch material and related cleanup) in the Fairfax and Armourdale Yard in Kansas City beginning January 11 and continuing through March 9, 1999) (System File MW-99-166/1185342 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 Operator R. E. Hagan shall now be compensated for two hundred seventy-two hours' pay at his respective straight time rate of pay.

OPINION OF BOARD

By notice dated January 30, 1998 in Service Order No. 8002, the Carrier advised the Organization of the following:

This is a 15-day notice of our intent to solicit bids to contract the following work:

Location: KCT Sub from Rock Creek Jct MP 444.8 to SW Jct MP A278.2; Rock Creek Jct MP 276.8 to Gillis St MP282.1; Neff Yard MP A279.0 to Troost Ave MP A282.0; ASB Jct MP 282.4 to West Yd MP 6.3; Edgewater MP 287.5 to Broadway MP 283.0; Manchester MP B278.8

Specific Work: furnishing labor, supervision, and equipment to perform program work, routine maintenance, and emergency work on an "As Needed" basis. The work, whether programmed or routine, may consist of digging out road crossings, load and unload panel switches, rail, ties, rail frogs, switch points and other

track material, clean out ditches, restore embankment, clean mud from tracks, unload and place rip rap stones, unload crushed rock from inside railroad Gondola cars, excavate and place pipes underneath tracks, clean debris from drainage structure and perform other miscellaneous emergency repairs as called upon.

Conference was held on February 6, 1998 on the January 30, 1998 notice, without resolution of the Organization's objection to the contracting of the work.

The instant dispute arose commencing in January, 1999 — one year after the above discussed notice given by the Carrier. The specific allegation as stated by the Organization in its March 9, 1999 claim letter is:

* * *

On January 11, 1999 through March 9, 1999 a contractor employee "Bruce" of Saginan Quarries from Neosha, Kansas was allowed to operate a Backhoe Tractor in the Fairfax and Armourdale yard in Kansas City on the Northern Region.

* * *

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 — operation of a backhoe — is classic maintenance of way work and falls "within the scope of the applicable schedule agreement" as contemplated by Article IV.

The relevant argument made by the Organization focuses upon the Carrier's notice.

The Carrier gave notice to the Organization on January 30, 1998 that it intended to contract out certain work. The work in dispute in this case was not performed until one year later, beginning in January, 1999. By itself, that lapse of time does not make the notice defective. We can envision all sorts of long term projects which only require the giving of one notice under Article IV.

The problem is with the scope of the notice. The Organization argues to us that the work done in 1999 was performed at a location which was not part of the notice. The disputed work was performed "in the Fairfax and Armourdale yard in

Kansas City on the Northern Region". From a reading of the January 30, 1998 notice, we cannot tell with a sufficient degree of certainty if the Organization's assertion is correct.

Therefore, if the "Fairfax and Armourdale yard in Kansas City on the Northern Region" where the work was performed falls within the geographic bounds of the January 30, 1998 notice, then the claim has no merit. However, if that location is sufficiently outside of the geographic bounds specified in the January 30, 1998 notice, then, given the length of time that passed since the January 30, 1998 notice, we are satisfied that the January, 1999 work was contracted out by the Carrier without giving the Organization prior notice as required by Article IV. If such is the case, then, consistent with *Third Division Award 32862* and *Award 22* of this Board, Claimant is entitled to full make whole relief due to lost work opportunities because the Carrier failed to meet its notice and conference obligations under Article IV.¹

¹ The fact that there was a conference on the January, 1998 notice in February, 1998 does not change the result. If the work in-
[footnote continued]

We shall retain jurisdiction over any disputes which may arise from the above.

AWARD

Claim disposed in accord with the opinion.



Edwin H. Benn
Neutral Member



Carrier Member



Organization Member

Chicago, Illinois

Dated: 8-15-02

[continuation of footnote]

involved in this dispute was not covered by the notice, then the conference did not cover the disputed work. But again, from what is before us, we cannot sufficiently tell. Given our discretion, we can remand the matter back to the parties for the required determination.