AWARD NO. 62
CASE NO. 62

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 (Brown Construction Company) to perform routine Maintenance of Way machine operator work (operate front end loader to clear brush, build dirt road and haul material) at Mile Post 532.91 at Longfellow on the Del Rio Subdivision beginning January 1 and continuing through January 8, 1999 to the exclusion of Machine Operator F. A. Hasty, Jr. (System File MW-99-159/1184212 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 F. A. Hasty, Jr. shall now be compensated for forty-eight (48) hours' pay at his respective straight time rate of pay and compensate for ten (10) hours' pay at his respective time and one-half rate of pay.

OPINION OF BOARD

By letter dated November 10, 1998, the Carrier advised the Organization:

> This is to advise of the intention of the Company to contract work to outside contractors at various locations listed below:
>
> * * *
>
> Some of the work to be performed will be tie renewal, crossing renewal, drainage work and vegetation control. Various equipment that could be used is backhoe, dumptruck, dozer, brushhog, chain saw, crane and operator.

Listed in the notice were 28 locations on various subdivisions and branches with mile post indicators.

Conference was held on December 1, 1998. A contractor performed the work on the dates set forth in the claim.

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 front end loader — is classic maintenance of way work and falls "within the scope of the applicable schedule agreement" as contemplated by Article IV.

For reasons discussed in *Award 13* of this Board, we find the Carrier's notice met its obligations under Article IV. The notice specifies the location and identifies the type of work to be performed and further identifies the equipment to be used. 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.

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.

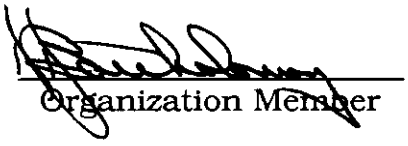
This claim shall be denied.

AWARD

Claim denied.

Edwin H. Benn
Neutral Member

Carrier Member



Organization Member

Chicago, Illinois

Dated: 7-29-02