SPECIAL BOARD OF ADJUSTMENT NO. 1080

(SOO LINE / BMWE BOARD OF ARBITRATION)

PARTIES TO DISPUTE: Soo Line Railroad Company

AND

The Brotherhood of Maintenance of Way Employees

THE ISSUE:

Did the Carrier violate agreements between the parties when, pursuant to the Carrier's notices of September 14, 1994, and August 2 and 5, 1994, it contracted out the work identified below during the 1994 work season; if the agreements were violated, what shall the remedy be? The work in question is:

(a) Extension and improvement of the siding at Kensal, North Dakota;

(b) Construction of a new siding at Hoffman, Minnesota; and

(c) Construction of new trackage and/or rehabilitation of existing trackage at Bensenville classification and intermodal yards consisting of all labor and equipment for the construction of new trackage, including but not limited to ballasting, lifting, lining, final surface, rail stressing, and welds.

FINDINGS AND DISCUSSION:

The Board of Arbitration was established by the parties in an agreement dated December 15, 1994, later authenticated and confirmed by the National Mediation Board. The hearing of this Board was conducted in Chicago, Illinois on April 25, 1995 and at that hearing, the parties submitted pre-hearing submissions and documentation in support of their positions. Following the hearing, both parties submitted post-hearing additional briefs.

The disputes contained in this matter were directly related to a work stoppage by the United Transportation Union beginning on July 14, 1994, which continued for 47 days. The BMWE, the Organization here, together with other unions honored the picket line set up by the UTU. During the first week of August, the Organization was notified by Carrier of Carrier's intent to contract out seven different projects involving maintenance of way work. These notifications were followed by a number of meetings and correspondence between the parties dealing with the Carrier's notification of intended contracting. On August 29, 1994, a Presidential Emergency Board order was issued which specified that the UTU members would go back to work. Subsequently, on August 30, 1994, a court agreement was reached between the Soo Line and the BMWE providing that the parties would negotiate the extent to which a contractor would be utilized. Furthermore, the Agreement provided that if the parties were unable to reach

agreement by September 19, 1994, the Company would be free to contract out the work which had been the subject of the various notifications.

The Scope Rule from both the Soo Line and Milwaukee Road Agreements provide as follows. The Milwaukee Road Agreement was dated December 1, 1982 and reads as follows:

RULE 1 - SCOPE
(Former C.M.St.P&P Agreement)

The rules contained herein shall govern the hours of service, working conditions, and rates of pay of the employees in the Maintenance of Way and Structures Department represented by the Brotherhood of Maintenance of Way Employees but do not apply to supervisory forces above the rank of foreman. These rules do not apply to employees covered by other agreements.

NOTE: In the event Carrier plans to contract out work within the scope of this agreement, the Carrier shall notify the General Chairman 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.

If the General Chairman, or his representative, requests a meeting to discuss matters relating to the said contracting transaction, the designated representative of the Carrier shall promptly meet with him for that purpose. Said Carrier and Organization Representatives shall make a good faith attempt to reach an understanding concerning said contracting, but if no understanding is reached, the carrier may nevertheless proceed with said contracting, and the Organization may file and progress claims in connection therewith.

Nothing in this Note shall affect the existing rights of either party in connection with contracting out. Its purpose is to require the Carrier to give advance notice and, if requested, to meet with the General Chairman or his representative to discuss and, if possible, reach an understanding in connection therewith. (See Appendix I)

The former Soo Line Agreement, dated October 1, 1987, provides as follows:

RULE 1 - SCOPE
(Former Soo Line Agreement)

(a) The rules contained herein shall govern the hours of service, working conditions, and rates of pay of all employees in any and all sub-departments of the Maintenance of Way and Structures Department represented by the Brotherhood of Maintenance of Way Employees. This Agreement shall not apply to the following:

1. Roadmasters, B&B Supervisors, Signal Supervisors, their assistants and/or other comparable supervisory officers and those of higher rank.

2. Employees governed by the provisions of existing agreements between the Company and other labor organizations.

(b) Employees included within the scope of this Agreement in the Maintenance of Way and Structures Department shall perform work of construction, maintenance, repair and dismantling of tracks, bridges, buildings, structures and other facilities used in, or accessory to, the operation of the Company in the performance of common carrier service, including dismantling of retired property.

It is the intent of this Rule and Rule 2 to preserve work currently performed by Maintenance of Way and Structures Department employees covered by this Agreement but will not redefine their jurisdiction to work performed by other than Maintenance of Way and Structures Department employees.

(c) When the Company plans to contract out work because the work requires special skills not possessed by the Company's employees, special equipment not owned by the Company, special material available only when applied or installed through supplier, or when time requirements must be met which are beyond the capabilities of Company forces to meet, the Company 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. 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 representatives 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. Nothing herein contained shall be construed as restricting the right of the Company to have work customarily performed by employees included within the scope of this Agreement performed by contract in emergencies that affect the movement of traffic when additional force or equipment is required to clear up such emergency condition in the shortest time possible. (See Appendix O to this Agreement.)

Further, the letter agreement dated December 11, 1981 between Mr. Berge, President of BMWE, and Mr. Charles Hopkins provides as follows:

APPENDIX I/O

December 11, 1981

Mr. O. M. Berge
President
Brotherhood of Maintenance
of Way Employees
12050 Woodward Avenue
Detroit, Michigan 48203

Dear Mr. Berge:

During negotiations leading to the December 11, 1981 National Agreement, the parties reviewed in detail existing practices with respect to contracting out of work and the prospects for further enhancing the productivity of the carriers' forces.

The carriers expressed the position in these discussions that the existing rule in the May 17, 1968 National Agreement, properly applied, adequately safeguarded work opportunities for their employees while preserving the carriers' right to contract out work in situations where warranted. The organization, however, believed it necessary to restrict such carriers' rights because of its concerns that work within the scope of the applicable schedule agreement is contracted out unnecessarily.

Conversely, during our discussions of the carriers' proposals, you indicated a willingness to continue to explore ways and means of achieving a more efficient and economical utilization of the work force.

The parties believe that there are opportunities available to reduce the problems now arising over contracting of work. As a first step, it is agreed that a Labor-Management Committee will be established. The Committee shall consist of six members to be appointed within thirty days of the date of the December 11, 1981 National Agreement. Three members shall be appointed by the Brotherhood of Maintenance of Way Employees and three members of the Committee will be permitted to call upon other parties to participate in meetings or otherwise assist at any time. The initial meeting of the Committee shall occur within sixty days of the date of the December 11, 1981 National Agreement. At that meeting, the parties will establish a regular meeting schedule so as to ensure that meetings will be held on a periodic basis.

The Committee shall retain authority to continue discussions on these subjects for the purpose of developing mutually acceptable recommendations that would permit greater work opportunities for maintenance of way employees as well as improve the carriers' productivity by providing more flexibility in the utilization of such employees.

The carriers assure you that they will assert good faith efforts to reduce the incidence of subcontracting and increase their use of their maintenance of way forces to the extent practicable, including the procurement of rental equipment and operation thereof by carrier employees.

The parties jointly reaffirm the intent of Article IV of the May 17, 1968 Agreement that advance notice requirements be strictly adhered to and encourage the parties locally to take advantage of the good faith discussions provided for to reconcile any differences. In the interests of improving communications between the parties on subcontracting, the advance notice shall identify the work to be contracted and the reasons therefore.

Notwithstanding any other provisions of the December 11, 1981 National Agreement, the parties shall be free to serve notices concerning the matters herein at any time after January 1, 1984. However, such notices shall not become effective before July 1, 1984.

Please indicate your concurrence by affixing your signature in the space provided below.

Very truly yours,

(signed) Charles I. Hopkins, Jr.
Charles I. Hopkins, Jr.

I concur:

(signed) O. M. Berge

The record is clear that both parties agree that the work involved in this dispute, as described in the Scope Rules of both Agreements, was customarily performed by employees represented by the Brotherhood of Maintenance of Way Employees. That is not an issue in this matter. Further, the record indicates that the Carrier, after the various negotiations starting in August of 1994, agreed that only the work at the Bensenville Yard as well as the two sidings at Kensal and Hoffman would be contracted out. The work was contracted out, resulting in the dispute here.

CONTENTIONS:

A brief summary of the positions of the two parties will be set forth hereinafter. It is clearly unnecessary and redundant to attempt to indicate all the evidence and arguments presented in the lengthy material submitted by both parties.

A. The Organization

On a factual basis, the employees contend that the Bensenville Yard work was accomplished by a contractor from October 14 to December 23, 1994. It is alleged that there were a total of some 21,500 man hours used by the contractor forces over a nine-week period, with approximately 45 employees during the last weeks of the project. There is no dispute with respect to the work which was the normal work of basic track construction, which was the heart of the project. The Organization also contends that during the period of the contractors' efforts at Bensenville, Carrier furloughed a total of 77 of its own maintenance of way employees under the Milwaukee Agreement.

With respect to the Hoffman siding, the Organization contends that there were approximately 16 employees used by a contractor from approximately October 13 to December 16, 1994 at the Hoffman siding. Further, when the contractor left the site on December 16, the work had not been completed and the Carrier assigned some of its own employees to finish the rail welding work during the

final weeks of December 1994. With respect to the Kensal siding, the employees contend that the contractor worked there from December 1 through December 9, 1994, employing approximately five to eleven men and a total of roughly 3,235 man hours. Here, also, when the contractor left the site on December 9, the work had not been completed and was finally completed when Carrier's employees were recalled from furlough during the month of February 1995, approximately two months following the date the contractor left the site. In addition, the Organization maintains that during the period that the contractors were working at both Kensal and Hoffman, the Carrier had furloughed approximately 60 BMWE-represented employees on the Soo.

Petitioner makes five fundamental arguments with respect to this dispute. The first is that the Carrier had promised to assign the work to BMWE-represented employees if they agreed to return to work before Soo entered the contracts with outside companies. The Carrier asserted repeatedly, orally, that it would forego contracting out of work which it had planned to do during the last quarter of 1994 if the Organization and its employees returned to work. Furthermore, according to the Petitioner, Carrier made these promises both orally and in writing during the period prior to the contracting out during the month of August 1994.

As a second argument, the Organization insists that the work in question was clearly work reserved to employees represented by the BMWE by the terms of the contracts. This is supported, according to Petitioner, by the Carrier's attempts through Section 6 notices to remove all existing restrictions on contracting out. These Section 6 notices took place during the period beginning in 1984 through 1989. The Organization insists that Carrier cannot achieve this limiting of restrictions through the arbitration process when it was unsuccessful in achieving those gains of revised contracting out language through the negotiation process. In fact, the Organization insists that the work in question is at the very core of the normal work performed by maintenance of way employees and cannot be contracted out under the existing Scope Rules of the contracts. In addition, it is maintained that there is no practice which supports Carrier's position, since the work had always been performed by BMWE-represented employees on both the Milwaukee and the Soo properties.

As an additional argument, Petitioner maintains that there were no urgent time requirements in any of the three locations which mandated that contracting out be used by Carrier. Specifically, Petitioner maintains that Carrier itself has indicated that the work at Bensenville was part of a grand five-year plan which Carrier had instituted to upgrade the area as required by FRA. This is supported by the fact that during the period just prior to the UTU strike, Carrier had reduced its

Bensenville forces to approximately ten men, and the work was slowed dramatically during May and June of 1994, thus the urgency argument is belied. Similarly, with respect to Kensal and Hoffman sidings, the work was required as a result of a traffic shift which occurred in 1992, some two years prior to this dispute. Thus again, the urgency argument fails as Petitioner views it. Petitioner also notes that following the UTU strike, Soo refused to allow the siding gang laborers to return to work until September 7, 1994, and the entire siding crew was furloughed on November 24, 1994. As a concomitant argument, Petitioner notes that the Carrier stated that it had insufficient manpower to accomplish the work in question. This position is unsound not only because of the lack of time emergency, as indicated supra, but also because Carrier did not bulletin any positions to do the work at any of the three locations subsequently, and there were employees on furlough at the time. It is also noted that Carrier had the option to hire employees if it had the manpower shortage which it deemed and argued about, and did not use that option. There were over six weeks available to hire additional employees and this type of hiring had taken place in prior years.

The Organization maintains that the Carrier's position that it was permitted to contract out the BMWE work because of a manpower shortage is fallacious. The Organization insists that the manpower shortage, if it indeed existed, was caused deliberately by the Carrier when it purposely instigated the UTU strike.

As a concomitant argument, the BMWE insists that according to the Carrier's own testimony, during 1994, the maintenance of way forces of the Carrier were assigned to perform non-urgent work which had been programmed for 1995 and 1996. In addition, it is clear from the testimony that the Carrier contracted out the work not because of time requirements or a manpower shortage, but in reality, because of an internally chaotic budget and planning process. As a final point, the Organization maintains that the contracting out activity caused a loss of work opportunity for the employees and a monetary remedy is, by history, tradition, and the authority of many awards, appropriate in this situation.

B. The Carrier

As a basic position, carrier believes that the language of the respective Agreements does not prohibit contracting out regardless of circumstances. Further, it served the proper notices as required by the contract on the Organization. Carrier also notes that a good faith effort was made to minimize the use of contractors by Carrier, however, all existing forces were insufficient to complete the necessary track work within the remaining construction season, in view of the climate. Further, as a final point, Carrier notes that no maintenance of way employees were furloughed as a result of the use of contractors.

The Carrier notes that there is no argument whatever but that the work involved was work "within the Agreement" and further, it could be considered "normally and customarily" performed by employees represented by the Organization. However, Carrier notes that this does not prohibit the use of a contractor under any and all circumstances, which is the Organization's position.

From a factual standpoint, Carrier maintains that the Court Agreement reached on August 30, 1994 provided that the parties would negotiate the extent to which a contractor would be utilized. Further, that Agreement specified that if the parties were unable to reach an agreement by September 19, 1994, the Company would be free to contract out the work. Carrier also specifies that initially it had proposed to use a contractor on seven different projects. However, after meeting with the Organization, Carrier agreed to limit the use of a contractor to just three projects, Bensenville and the two sidings at Hoffman and Kensal. Further, there is nothing in any of the agreements, according to Carrier, which provides the Organization with veto power over the right of Carrier to contract out any work, even though covered by the Scope Rule of the Agreement. The Company emphasizes the fact that it has the right to make determinations with respect to the desirability and necessity for completing work within certain time frames. It was Carrier's determination that it would have been impossible to complete the work

at the Bensenville Yard or at the two sidings within the 1994 track season in a safe and efficient with the existing work force. Carrier admits readily that originally it had planned to perform the particular project with its own work force, but it was impossible after the 47 day hiatus caused by the strike. Carrier notes further that it did hire 117 maintenance of way employees in 1994, 23 of whom were hired after September of 1994, in order to try to improve the possibility of completing the work in question. Carrier's planning involved an assumption of a freeze-up, limiting work on the tracks, as of November 18, 1994.

On a factual basis, the record indicates that at Bensenville, Carrier used its own forces during the period from September through December 1994 up to 21,000 man hours, and approximately the same number of hours with a contractor. Further, Carrier's records indicate that it was constantly short of forces in Bensenville, and some of the program was brought forward in 1994 in order to complete the work within the period allowed prior to the freeze-up, using overtime and other devices with its own forces.

With respect to Kensal, Carrier's evidence indicates that a contractor was used and then released and Carrier completed the project with company forces. The contractor was released when the project was sufficiently completed to get the siding into service and provide a safe operation. The intent of the Carrier was to complete the welding with its own forces, weather permitting. The Hoffman

project was completed on December 16, 1994 and okayed for operation. It is Carrier's position that it was required to make the necessary determination of whether a contractor's work was required in order to protect the safety and efficiency of the operation. Thus, the necessity for the work decision must be management's. Carrier notes particularly that the question of, would the work in question be within the scope of the Agreement, is not an issue since it concedes readily that this is work which is within the scope of the Agreement but has been accomplished by other than employees represented by the BMWE in the past when necessary. Carrier insists that it made a good faith effort to keep the use of contractors to a minimum in this particular situation.

With respect to the matter of employees on furlough during the time that the contractor was used, Carrier states specifically that there were sufficient job opportunities for all employees who desired to work during the entire time that the contractor was employed at Bensenville, Kensal and Hoffman. Any employees who did not work during that period did not do so because of their own choice. Carrier argues that when an individual's position is abolished, as occurred in this instance, that employee is entitled to exercise seniority and may displace junior employees in accordance with the rules. In this situation, all the employees identified by the Organization could have worked at Bensenville following the completion of the project upon which they're working prior to their furlough. Junior employees worked in Bensenville until the freeze-up and any

employee who was senior could have exercised seniority to displace such junior employees. The same situation was applicable to the two sidings and the employees who were laid off in that division.

Carrier's position may be summarized by the following statement:

> Soo believes that the clear language with the respective rules provide for contracting out under these circumstances. Soo has established that the contracting out was "necessary" based on the need to complete the work within the required time frame. Whether the BMWE agrees that the work had to be completed within the required time frame is not the issue. Management has the legal obligation to provide necessary service in a safe and efficient manner. Along with our legal obligation goes the necessary discretion to make such decisions regarding the operation. Soo has not merely contended that contracting out was necessary, we have established a legitimate need based on fact.

Carrier believes that none of its forces were furloughed as a result of the use of contractors and there was ample work for any seasonal employee who desired to continue to work through December of 1994. Furthermore, the Organization has not established that the contracting out provisions of the agreements have been violated or that a remedy is appropriate.

CONCLUSIONS:

This dispute is grounded on the question of whether the contracting out conducted by the Carrier in September and the several months thereafter in 1994 was in violation of the two agreements between the parties. Both parties agreed that the work involved was clearly work covered by the Scope Rule of the agreements, which is customarily performed by the BMWE-represented employees.

A careful examination of the rules in question, as well as the Scope Rules, indicate that neither contract prohibits contracting out of Scope Rule-covered work as urged by the Organization. This conclusion is supported by the fact that the Organization has filed Section 6 notices attempting to eliminate the right of Carrier to contract out work. Clearly, such language would not be required if the contract already provided for it, as is argued by Petitioner. On the contrary, the Board finds that the language in the two agreements, though differing, essentially are consistent with the language which is used throughout the industry which permits the contracting out of work as long as the appropriate notice is given pursuant to the National Agreement. In addition, of course, in the Soo Agreement there are certain exceptions which must be met, which will be dealt with hereinafter.

The term, good faith, is used in a number of contexts in the Agreement and in other correspondence and is clearly one of the elements involving the contracting out operation and agreements between the parties. It is, perhaps, the most ambiguous term used with respect to this dispute. Whether the meaning of the term, good faith, is merely ambiguous or there are other semantic implications, is difficult to decide. However, there is some evidence of possible animus by the Carrier in this instance, which has a bearing on the dispute. It is perfectly evident that Carrier desired the BMWE employees to come back to work as quickly as possible in spite of the UTU strike. Whether or not this was a motivating factor in the decision to contract out is purely speculative. However, Carrier's animus, if any, is not sufficient to negate its rights to determine what would be necessary for it to complete the required work prior to the freeze. On the other hand, the facts indicate that Carrier initially intended to contract out seven projects, but after meeting with the Organization and considerable discussion in terms of the needs that it had, it was agreed that the contracting out would be limited to just the three projects which are the subject of the dispute, Bensenville, Hoffman, and Kensal. This clearly was an indication of good faith, contrary to the animus factor cited above.

The Organization's concerns with respect to the contracting out of the work involved in this matter are well-founded. Obviously, the work is fundamentally the basic work covered by the scope of the agreements which is normally reserved by the Scope Rule to BMWE-represented employees. The Board, however, must observe that the work in question indeed can be contracted out under the terms of the Agreement. This has been the case, at least since 1968, in the National Agreement at that time. Is it possible that this could erode the BMWE Bargaining Unit covering employees of the Carrier? Though this is a speculative question, the concerns of the Organization must be understood and accepted as being legitimate. The contractual latitude which Carrier has must be exercised on a careful and good faith basis less it be construed to undermine the very essence of the agreement between the parties covering the work for which the employees are represented by BMWE. The Organization's desire to change the language, to restrict the ability of Carrier to contract out, is understandable; however, the forum which it has chosen to attempt to accomplish this is misplaced. Such an understanding to limit the contracting out must be accomplished through negotiation, not through the arbitration process here. As the language now stands, Carrier does indeed have the right to contract out BMWE-represented employee work under certain circumstances (in the Soo Agreement).

The Organization argues vigorously that the Carrier does not have the right under the Soo Agreement to make the decision that the work indeed could not be accomplished during the current (1994) season by its own forces, and therefore, it was required to contract out the work prior to the freeze-up. Whether Carrier is correct or not in its decision in this instance is a matter which cannot be determined by this Arbitration Board. However, what can be determined is that the Organization does not have the right to veto Carrier's decision in this respect. That decision must be made by Carrier in terms of its management of the property and all of its obligations, both to the public and under the statutes.

The Organization also argues that the so-called manpower shortage was caused by the UTU strike, which was instigated by Soo. That issue is one which must be considered to be an unsupported allegation. In any event, that determination is clearly beyond this Board's jurisdiction.

The parties have presented diametrically opposing versions of the manpower situation, which was the governing factor at the conclusion of the UTU strike, beginning in September of 1994. On its face, the two opposing versions of the facts would appear to be dealing with two different circumstances and different locations and employers. However, evaluating the voluminous data presented, the Board is convinced that there were no employees who were deprived of work

and who were furloughed as a result of the contracting out at the three locations with which this Board is concerned. There is no convincing evidence to the contrary. The extent of the difference of opinion of the two parties is, perhaps, epitomized by the fact that the Organization contends that the Carrier failed to assign any of its 700 maintenance employees to perform work at Bensenville during September and the first weeks of October 1994. Carrier, on the other hand, points out that an equal number of man hours were used to perform work at that location by its own forces and the contractors. Clearly, the Board is unable to resolve this type of dispute, but on its face, it is not relevant since there is no probative evidence that employees were denied the opportunity to work at that location. The problem is further complicated by the fact that the contract provides for bumping. Any employee who was furloughed had a right to displace employees with less seniority who were retained during the winter work season. There is no evidence that senior employees made any attempt whatever to displace the employees at the locations involved. In fact, Carrier's version of the situation was that it was hard-pressed to find sufficient employees to accomplish the work which it required, and was thus forced to contract out the work, particularly at Bensenville and Kensal. In fact, Carrier's assertion, which was not contravened, is that when it became possible to use its employees, it terminated the contractor's activities and completed the project using its own people as they became available. The fact of the matter is that the Organization has presented no specific hard evidence of any employee who desired to work during that

period at any of the three locations, and was denied that opportunity because a contractor was used. It must be added that even though budgetary and capital equipment problems perhaps were the driving force in some of management's decisions, management did have the right and, of necessity, the obligation to determine whether the work at the three locations was required at the earliest possible time or whether it could be postponed into the 1995 season. This Board is not in a position to second-guess whether that business judgment was sound or not and does not intend to do so. However, it does indeed conclude that Carrier did have the right to make those business decisions without necessarily the concurrence of the Union.

To resolve the disputes here, one must again examine the contractual language which is applicable on both the Soo Line and the Milwaukee Road. There is no question but with respect to the Milwaukee Road Agreement but that Carrier may indeed contract out work provided that it serves notice on the Organization in advance of the contracting out and meets as the Scope Rule requires. It must be concluded that Carrier did not violate the Agreement by that activity, which covered the Bensenville operation.

With respect to the Soo Line Agreement, the language is somewhat different. In that Agreement, as indicated heretofore, there are exceptions. In Paragraph 2(c) of the Scope Rule, the Company may plan to contract out because it required

special skills and other matters, and "when time requirements must be met which are beyond the capabilities of Company forces to meet", and notification to the Organization shall be given. Again, in this instance, there is no convincing evidence that Carrier did not have a true problem of completing the work on the two sidings covered by the Soo Agreement prior to the freeze-up. Given that conclusion, Carrier was within its rights to determine that contracting out was necessary, and without veto from the Organization.

The conclusions reached by the Board must be tempered by one strong footnote. That footnote is that Carrier is put on notice that the use of its contracting out powers as spelled out in the two Scope Rules here, cannot be abused to the extent that there is an erosion of the bargaining unit by virtue of such contracting activity. It is not a matter merely of good faith, but of the fundamental relationship between the parties, that every effort should be made to retain work which BMWE employees are capable of accomplishing given the business objectives of Carrier. Contracting out is the exception to that generalization and must not be abused; any abuse of this right would not be tolerated by Boards such as this.

The conclusion in this instance, however, is that Carrier did not violate the Agreement between the parties when it contracted out the work identified at the three locations.

AWARD

The question is answered in the negative.

I. M. Lieberman, Neutral-Chairman

Carrier Member

Steven V. Powers
Employee Member
I firmly dissent to the Award. Please see Interpretation

Minneapolis, Minnesota
July 19, 1995

SBA 1080

SPECIAL BOARD OF ADJUSMENT NO. 1080

(SOO LINE/BMWE BOARD OF ARBITRATION)

INTERPRETATION

Based on a request made by the Organization for an interpretation, an executive session of the Board was held on Nov. 20, 1995. After careful evaluation of the problems presented at the Nov. 20th meeting, the following interpretation is made:

I. Work covered by the Scope Rule cannot be contracted out unless there are sound business reasons to complete the work within a particular time frame and no employees are deprived of work by this action, with the proviso that the Carrier may be expected to hire seasonal employees if possible.

II. The basic dispute presented to this Board has been decided on the particular facts and situations offered to the Board by the parties.

I.M. Lieberman, Neutral-Arbitrator

R.Mullaney.Carrier Member

S.V. Powers.Employee Member

Minneapolis, Minnesota
Nov. 1995
December 7, 1995