AWARD NO. 18
CASE NO. 18

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 (Alpha Railroad & Piling, Inc.) to perform routine Maintenance of Way Bridge and Building work (pile driving and related bridge repair) at the railroad bridge at Mile Post 220.20 at Lake Charles, Louisiana beginning July 1 and continuing through July 31, 1998 (System Files MW-98-200/1157529 and MW-98-215/1160495 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 meet and discuss this matter 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, Claimants J. I. Rodriguez, J. B. Mercantel, D. P. Barras, R. W. Sonnier, D. Wilson, M. E. Hanks, R. E. Frizzell, J. W. Baggett and G. D. Welch shall now each be compensated for one hundred eighty-four (184) hours' pay at their respective straight time rate of pay and each shall be compensated for sixty-eight (68) hours' pay at their respective time and one-half rate of pay.

OPINION OF BOARD

By letter dated May 18, 1998, the Carrier advised the Organization:

> This is a 15-day notice of our intent to contract the following work:
>
> Location: ... near Bridge at MP 220.17 on Railroad's Lafayette Subdivision near Lake Charles, LA.
>
> Specific Work: providing all labor materials, tools, supplies and fully

> fueled and maintained equipment necessary to drive piling and other work associated with construction and modification of an existing structure.
>
> * * *

By letter dated May 28, 1998, the Organization requested a conference. By letter dated June 9, 1998, the Carrier advised the Organization to contact it so that a mutually agreeable time and date for a conference could be arranged. Conference was not held until October 20, 1998. A contractor performed the work.

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 — pile driving and related bridge repair work — 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.

The fact that although notice was given by the Carrier on May 18, 1998 but conference was not held until October 20, 1998 does not require a sustaining award. In its May 18, 1998 notice and again on June 9, 1998, the Carrier offered to meet with the Organization. However, the Organization did not take advantage of that offer. The Organization cannot now assert that the Carrier failed to meet its conference obligations.[1]

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[1] *See Third Division Award 31015* ("The Organization's failure to follow through and assure that a conference was held, foreclosed the opportunity for meeting and discussion, a prerequisite for contesting contracting out under the Agreement ....").

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

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[2] *See e.g., Third Division Award 31281* where similar pile driving work was contracted out:

> We are satisfied that the type of work involved in this dispute is of a nature similar to the kind this Board has found the Carrier can contract out. Third Division Awards 27010, 29309, 30193, 30287. Those awards are not palpably in error and shall be followed. The type of equipment used in this matter does not sufficiently distinguish this case from the work performed in previously decided matters. Because of the previously decided cases which were premised upon the established past practice of the Carrier of contracting out similar work with the Organization's acquiescence, the Organization's assertion that the Carrier violated the December 11, 1981 Letter of Understanding concerning reducing subcontracting cannot be maintained.