

AWARD NO. 31
CASE NO. 31

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 (Neosho Construction) to perform routine Maintenance of Way machine operator work (operate backhoe in connection with covering rail at crossings) between Mile Posts 158 and 166 on December 9, 10 and 11, 1998 (System File MW-99-110/1178759 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 S. C. Lewis shall now be compensated for twenty-four (24) hours' pay at his respective straight time rate of pay and compensated for two (2) hours' pay at his respective time and one-half rate of pay.

OPINION OF BOARD

The Organization focuses upon a notice sent by the Carrier dated November 2, 1998 listing 10 locations and mile post indicators which stated:

This letter is to advise that Missouri Pacific d/b/a Union Pacific Railroad, intends to contract work to an outside company for backhoe, dump truck, brush-hog, crane and chain-saw with operators and traffic control support services in connection with construction and repair of road crossings to assist company forces in the performance of their work. This work will be performed from December 1, 1998 through December 31, 1998, at the following locations.

Place: ...

* * *

Equipment: Backhoe, dump truck, trackhoe, loader, dozer, brush-hog mower, crane and chainsaw with operators and traffic control support services in connection with construction and repair or road crossings.

Specific Work: To assist gang in re-new and repair of crossings and drainage facilities; remove brush; mow and clean-up on right-of-way; install and replace ties and ballast; retire, repair, and install switches and switch ties.

* * *

According to the Organization, conference was held November 24, 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 dis-

puted 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.

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.¹

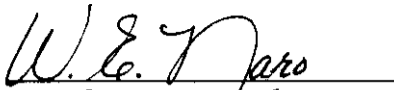
This claim shall be denied.

AWARD

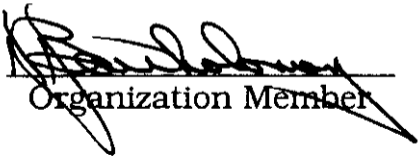
Claim denied.



Edwin H. Benn
Neutral Member



Carrier Member



Organization Member

Chicago, Illinois

Dated: 7-29-02

¹ See e.g., *Third Division Award 32867* where similar operation of a backhoe was contracted out ("... the kind of work involved in this dispute has been contracted out in the past"). See also, *Award 13* of this Board (involving the contracting out of "operat[ion of] backhoes to install crossings and switches").