

AWARD NO. 40
CASE NO. 40

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 (W. T. Byler, Inc.) to perform routine Maintenance of Way truck operator work (operate truck to transport Maintenance of Way speed swing) from the Work Equipment Shop in the Englewood Yard at Houston, Texas to the siding at Sugarland, Texas on January 12, 1999 (System File MW-99-126/1179874 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, Six Ton Plus Truck Operator J. P. Castro shall now be compensated for eight (8) hours' pay at his respective straight time rate of pay.

OPINION OF BOARD

By letter dated December 4, 1998, the Carrier advised the Organization:

This is to advise of the intention of the Company to contract work to outside contractors from time to time at various locations on the attached list. Some of the work to be performed will be tie renewal, crossing renewal, drainage work and vegetation control. Equipment that could be used is backhoe, dumptruck, dozer, busing, chain saws, various type cranes, and operators.

* * *

Attached to the notice was a list of 56 locations on various subdivisions (with the exception of four locations in yards) with mile post indicators. Conference was held on December 4, 7 and 16, 1998. A con-

tractor performed the work on the date 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 truck to transport equipment — 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

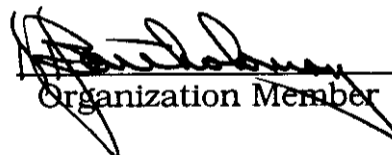
Claim denied.



Edwin H. Benn
Neutral Member



Carrier Member



Organization Member

Chicago, Illinois

Dated: 7-29-02