AWARD NO. 44
CASE NO. 44

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/truck operator work (operate loader and dump trucks to install ties and haul material) at Mile Post 202.75, Kirby Yard in San Antonio, Texas on December 3 and 4, 1998, to the exclusion of Machine Operators F. A. Hasty, Jr., A. V. Lopez and W. L. Owens (System File MW-99-119/1178768 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 Operators F. A. Hasty, Jr., A. V. Lopez and W. L. Owens shall now each be compensated for sixteen (16) hours' pay at their respective straight time rates of pay and compensated for four (4) hours' pay at their respective time and one-half rates of pay.

OPINION OF BOARD

By notice dated November 10, 1998, the Carrier advised the Organization of its intent to contract out certain work including "... tie removal, crossing removal, drainage work and vegetation control ..." and further advised the Organization that "[v]arious equipment that could be used is backhoe, dumptruck, dozer, brushhog, chain saw, crane and operator." By letter dated November 17, 1998, the Organization requested conference be held. By letter dated November

24, 1998, the Carrier agreed to meet with the Organization on December 1, 1998. Conference was held without resolution. This claim followed.

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 loader and dump trucks — 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 sufficiently specifies the locations 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.[1] 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.

AWARD

Claim denied.

Edwin H. Benn
Neutral Member

Carrier Member

Organization Member

Chicago, Illinois

Dated: 8-15-12

[1] *See* Carrier's Exh. E. *See also, Awards 10, 40* and *62* of this Board.