

SPECIAL BOARD OF ADJUSTMENT
BMWED-UP FLAGGING ARBITRATION BOARD
(Union Pacific Agreement and former Chicago and
Northwestern Transportation Agreement)

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES DIVISION/IBT)) Case No. 4
and))
UNION PACIFIC RAILROAD COMPANY)) Award No. 4
_____))

Martin H. Malin, Chairman & Neutral Member
Robert Shanahan Jr., Employee Member
Derek E. Hinds, Carrier Member

Hearing Date: September 16, 2020

STATEMENT OF CLAIM:

1. The Agreement was violated when the Carrier assigned or otherwise allowed outside forces (RailPros.) to perform Maintenance of Way Department flagman foreman duties on the Union Pacific Albert Lea Subdivision between Mile Posts 280.5 and 282.34 commencing on April 26, 2018 and continuing (System File RI-1801C-844/1707352 CNW).
2. The Agreement was further violated when the Carrier failed to comply with the advance notification and conference provisions in connection with its plans to contract out the work described in Part 1 above and when it failed to assert good-faith efforts to reduce the incidence of subcontracting and increase the use of its Maintenance of Way forces as required by Rule 1B and Appendix 15.
3. As a consequence of the violations referred to in Parts 1 and/or 2 above, Claimant A. Morreim shall now be compensated for all man-hours that the contractor spent performing the Agreement covered work at the applicable rate of pay.

FINDINGS:

This Special Board of Adjustment upon the whole record and all of the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

By letter dated June 7, 2018, the Organization submitted a claim alleging that, commencing on April 26, 2018 and continuing, Carrier hired an outside contractor, RailPro to perform flagging foreman duties on the Albert Lea Subdivision between mile posts 280.5 and

282.34 Carrier responded by letter dated July 24, 2018, that the Organization had failed to provide any evidence in support of its claim.

The instant case is controlled by our decision in Case No. 3, Award No. 3. The flagging at issue in the instant case was in connection with road construction undertaken by the Minnesota Department of Transportation. As detailed in an email from the relevant MnDOT official, in the prior construction season, Carrier supplied a flagman for the project but in 2018, Carrier instructed MnDOT to have its contractor “coordinate flagging with their [Carrier’s] designated subcontractor RailPros. All billing, financial and other matters related to the agreements continued to be coordinated directly between MnDOT and Union Pacific.” The email further stated, “Our agreements were directly with UP, the State did not enter onto a contract with RailPros.”

The record thus reflects that Carrier controlled the work which was performed on Carrier’s property. Consequently, the Agreement applied and the claim must be sustained.

AWARD

Claim sustained.

ORDER

The Board, having determined that an award favorable to Claimant be made, hereby orders the Carrier to make the award effective within thirty (30) days following the date two members of the Board affix their signatures hereto.

Martin H. Malin, Chairman

Derek E. Hinds

Carrier Member

Robert Shanahan, Jr.

Employee Member

Dated at Chicago, Illinois, October 1, 2020

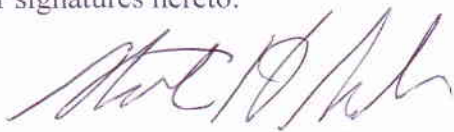
the coverage of the Agreement.

AWARD

Claim sustained.

ORDER

The Board, having determined that an award favorable to Claimant be made, hereby orders the Carrier to make the award effective within thirty (30) days following the date two members of the Board affix their signatures hereto.

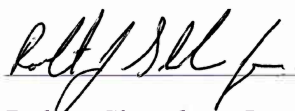


Martin H. Malin, Chairman

Derek E. Hinds Dissent to Follow

Derek E. Hinds

Carrier Member



Robert Shanahan, Jr.

Employee Member

Dated at Chicago, Illinois, October 1, 2020