

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 39724
Docket No. MW-38543
09-3-NRAB-00003-040536
(04-3-536)**

The Third Division consisted of the regular members and in addition Referee Brian Clauss when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(The Texas Mexican Railway Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned outside forces (Osmose) to perform Maintenance of Way and Structures Department work (installing/replacing mud blocks, pilings, caps, braces, shims, head walls, wing walls, ties and related bridge maintenance work) at Mile Post 64.11 and Mile Post 74.52 between Hebronville, Texas and Realitos, Texas beginning February 2, 2004 and continuing. (System File EPTM-04-11/270).**
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with a proper notice of its intent to contract out the work in question and failed to exert a good-faith effort to increase the use of Maintenance of Way forces and reduce the incidence of employing outside forces pursuant to Rule 29 and the December 11, 1981 Letter of Agreement.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants L. Serna, J. Garcia and G. Vasquez shall now each be compensated for one hundred twelve (112) hours pay at their respective straight time rates of pay and for seventy-seven (77) hours' pay at their respective time and one half rates of pay for the hours expended by the outside forces in the performance of the aforesaid work during the period beginning February 2, 2004 through March 28, 2004 and the Claimants shall be compensated at their applicable**

rates of pay for an equal portion of all man-hours expended by the outside forces in the performance of the aforesaid work beginning March 29, 2004 and continuing.”

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

The Organization protested subcontractors performing bridge repair work at the locations cited in the Statement of Claim.

The Organization maintains that the instant work of performing bridge repairs was not emergency work; rather (1) it was clearly the work of the Claimants (2) the Carrier did not conduct good faith discussions with the Organization about contracting out and (3) the Claimants were willing and able to perform the work, but the Carrier did not give them a good faith opportunity to have the work assigned to them. By reducing the workforce by more than 50 percent, the Carrier has not operated in good faith and now seeks to avoid having Organization members perform scope covered work through subcontracting. The Organization claims that the Carrier was obligated to supplement the workforce to meet its responsibilities.

The Carrier responds that the bridge repairs were pursuant to an emergency and the notice requirements for contracting therefore do not apply.

The Board carefully reviewed the evidence and finds that the Organization failed to prove a violation of the Agreement in this case. The Carrier admitted that no notice was served on the Organization involving the two bridges. The Carrier asserted that no

notices were sent because the repair work was emergency work that was discovered during an inspection of the bridges. The bridges at issue were repaired pursuant to an emergency as detailed in the Carrier's letter dated May 7, 2004. Specifically, the bridge at MP 64.11 was found to have a severe defect in that the eastern approach had settled requiring headwall replacement. The bridge at MP 74.52 was found to be leaning and repairs needed to be completed as quickly as possible. The Carrier cited both bridge repairs as emergencies and the Organization did not provide evidence to the contrary.

There were emergency situations at MP 64.11 and MP 74.52 – a settling bridge requiring a wall replacement and a leaning bridge certainly suggest that immediate action is required. We find that the Agreement was not violated in these emergency situations when no notice was served on the Organization - because the emergency situations required immediate action. (See Third Division Award 30868.) Accordingly, the claim is denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 26th day of June 2009.