

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**THIRD DIVISION**

**Edward F. Carter, Referee**

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**THE CHICAGO, ROCK ISLAND & PACIFIC  
RAILWAY CO.**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood—

(1) That the Carrier violated the provision of the agreement in contracting reinforcement work on Pier 2, Bridge 5204, Southern Division; and

(2) That Messrs. D. C. Howard, Earl Hollinsworth, Richard Scrimager, C. E. Daniell, Luther Burt, James L. Brown, W. D. Brooks and H. H. Hoyt, B. & B. employees, and other employees in the B. & B. Department similarly affected, be paid the difference between what they were permitted to earn and what they were entitled through seniority to earn for the period from March 16, 1940 to and including April 24, 1940.

**EMPLOYEES' STATEMENT OF FACTS:** On March 6, 1940, the Austin Bridge Company of Dallas Texas, through contract with the Carrier, started construction to reinforce footing on Pier 2, Bridge 5204. From March 6, 1940 through April 24, 1940, the Austin Bridge Company was engaged in making the necessary reinforcement to footing of Pier 2.

During the period from March 6 to April 24, 1940 the employees named in Statement of Claim were laid off or working on lower rated positions on account of force reduction; they were thus deprived of employment to which they were entitled through seniority during the period involved in this claim.

**POSITION OF EMPLOYEES:** It is the position of the Employees that Rule 1 of the agreement effective May 1, 1938 was violated by the Carrier. The rule reads as follows:

**"RULE 1.**  
**SCOPE.**

"These rules will govern the hours of service and working conditions of all employees not including supervisory forces above the rank of foreman, performing work of a maintenance and construction character \* \* \*."

Rule 1 further provides that:

"The Bridge and Building Department is a sub-department of the Maintenance of Way Department and will cover all employees working under the supervision of the Master Carpenter, Division Engineer, Engineer Maintenance of Way or the Chief Engineer.

to time on basis of their seniority as their services were needed and Messrs. Scrimager, Daniell and Burt also were subject to recall as their services might be needed in the Bridge and Building Department. The layoffs of the claimants had no relation to the contract made with The Austin Bridge Company in this case.

The evidence of record does not sustain the employes in the instant claim and the Carrier respectfully requests that it be denied by your Board.

**OPINION OF BOARD:** The only question for determination in the present claim is whether the Carrier violated its agreement with the Brotherhood of Maintenance of Way Employes in contracting reinforcement work on Pier 2, Bridge 5204, to The Austin Bridge Company.

It is the well established rule that a Carrier may not let out to others the performance of work of a type embraced within one of its collective agreements with its employes. See Award No. 757 and awards therein cited. There are, however, exceptions to this rule which will be applied only upon their establishment by definite proof. One of the exceptions may be said to exist when it appears that the work requires equipment and skill which the Carrier itself cannot otherwise provide. In this respect, it is the contention of the Carrier that it did not possess the equipment to do the work and that its bridge crews were not equipped or sufficiently experienced to do this special type of work. The Employes contend that the work was ordinary pier reinforcing which the Carrier's employes could have done, and that no equipment was needed other than that usually owned by a railroad. These contentions present the issue to be decided.

The contract with The Austin Bridge Company required the contractor to furnish, drive and remove the steel sheet piling cofferdam and timber waling and to excavate and place a concrete protection wall and apron around Pier No. 2, Bridge 5204, over the Red River at Terral, Oklahoma. It was this work which the Carrier asserts it did not have the material, tools, special machinery and equipment to perform.

The Carrier recites a history of its difficulties with bridge piers in this territory, culminating in the discovery that the shale strata supporting the piers were subject to scour and erosion which sometimes resulted in the undermining of the pier footings. The Carrier determined to seek expert assistance in checking the condition of the bridge piers in the territory and to have corrected any defects discovered. It was found, on so doing, that Pier No. 2 was undermined and the Carrier thereupon contracted with The Austin Bridge Company to perform the necessary reinforcing work. The magnitude of the work, the danger to workmen, the skill required and the facilities employed are recited in the record. It can hardly be disputed that the work was specialized in character and hazardous by nature. Without proper skill and equipment it would be extremely hazardous. The Carrier shows the type of machinery and equipment used by the contractor, much of which it claims it did not possess.

Employes contend, on the other hand, that the equipment could have been found somewhere on the railroad system and that employes sufficiently skilled to have done the work were available. Such assertions however, unsupported by factual data, are not sufficient to overcome the managerial judgment of the Carrier in contracting the work, when such judgment was exercised after consideration of facts such as are shown by this record. It must ever be borne in mind that the Carrier is charged with the safety of its men as well as that of the public in using its transportation facilities. Its managerial judgment ought not to be lightly disregarded in matters of this kind. While it is generally the rule that a Carrier is not permitted to farm out work which can be performed by its employes, yet, where the evidence, as here, is sufficient to warrant the exercise of managerial judgment as to whether the Carrier has

the men, equipment and facilities to perform the work, the contracting of the work by the Carrier cannot be said to constitute a violation of the agreement. The proof is insufficient to sustain an affirmative award.

**FINDINGS:** The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the carrier and the employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the contracting of reinforcing work on Pier 2, Bridge 5204, under the circumstances shown by the record, does not constitute a violation of Carrier's agreement with its Maintenance of Way Employees.

**AWARD**

Claim denied.

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

**ATTEST:** H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 15th day of October, 1943.