

Award No. 6464
Docket No. MW-6235

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward M. Sharpe, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

**CHICAGO, ROCK ISLAND AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood;

(1) That the Carrier violated the agreement by employing contractors List and Weatherly to perform service in connection with the construction of a steel bridge at Washington, Iowa, during the period April 15 to April 30, 1947;

(2) That Steel Bridgemen John U. Campbell, W. R. Hardwick, Harold E. Tisor, C. C. Becker, Winfred L. Vaughn, R. E. McDuffie and Tom Desmond, be paid eight (8) hours each at their regular rates of pay for each day the contractors' employes were allowed to perform services for the Carrier during the period from April 15 to April 30, 1947.

EMPLOYEES' STATEMENT OF FACTS: In connection with the construction of a new line of track near Ainsworth, Iowa, the Carrier contracted with the List & Weatherly Contracting Company, for the installation of a bridge.

List & Weatherly employed a number of iron workers, a foreman, assistant foreman, machine operator and a fireman. The Contractor experienced some difficulty in performing the required work, which was started on April 15, 1947.

On April 30, 1947, the Carrier instructed its system Steel Bridge Gang No. 1, to proceed to the work location for the purpose of assisting the contractor's forces in completing the bridge work. While traveling to the work location, the members of System Steel Bridge Gang No. 1, met some of the contractor's forces who were returning to their homes, having either resigned or been discharged.

Upon arrival at the work location, they found a Contractor's foreman, assistant foreman, machine operator and fireman present and learned that the contractor's derrick had been upset and that a steel bridge girder, weighing approximately 50 tons, and approximately 60 feet long, had been dropped in the creek bed.

OPINION OF BOARD: The only claim for determination in this case is whether the Carrier violated the Agreement relative to the construction or repair of steel bridges during the period from April 15 to April 30, 1947 when they employed the firm of List and Weatherly to perform services in connection with the construction of a steel bridge at Washington, Iowa.

It is a well established rule that a Carrier may not contract with others for the performance of work of a type embraced within one of its collective agreements with its employes, see Award No. 757. There are exceptions to this rule. Award 2338 was held to be an exception when in the exercise of managerial judgment the Carrier determines that it has not the men, equipment and facilities to perform the work.

It is the position of the Carrier, and that after a thorough study of the job, the hazards and other conditions relating to the work, Management decided that it was necessary to employ a contractor who had the needed special equipment for this type of work.

It is our opinion that the burden of showing that the Carrier does not have the men, skill and equipment to perform this work is upon the Carrier. The (or Our) assertion to that effect is not sufficient. Proof is a necessary element of this claim.

We note that the cost of the bridge was slightly in excess of \$65,000 and that the heaviest girders or piece of material which required handling was an 80 foot girder weighing 50 tons and that the contractor used a 100 ton capacity crane to handle the 50 ton girder in the instant case.

Carrier asserts that it was necessary to use a heavy A. Frame 100 ton capacity derrick car to carry the steel girders out ahead of it and place them on the foundation as the work had to be done from one end and no falsework had been constructed and that it was their lack of this essential equipment that made it necessary for them to have this work done under contract.

It is a 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.

In Award 2338 it was said "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."

In the case at bar it was the judgment of the Management that it was necessary to use a heavy A. Frame 100 ton capacity derrick car to carry the steel girders out ahead of it and that the Carrier lacked this essential equipment. The facts and circumstances in this case justifies the Carrier in entering into a contract for the work to be done.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 29th day of January, 1954.