Award No. 12980
Docket No. MW-11297

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

THE NEW YORK, CHICAGO AND ST. LOUIS RAILROAD COMPANY

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

(1) The Carrier violated the effective Agreement when, on November 18, 19, 20, 21, 22 and 25, 1957, it assigned the work of installing eleven steel bridge girders in Bridge No. 264-10 to a General Contractor, whose employes hold no seniority rights under the provisions of this Agreement.

(2) Crane Operator George Northrop, B&B Foreman M. E. Blue, Assistant Foreman Axton Collins, Carpenters G. Renshaw, Joe Womack, L. Talbert and A. Brown each be allowed pay at his respective straight time rate for an equal proportionate share of the total man-hours consumed by the Contractor's forces in performing the work referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: On November 18, 19, 20, 21, 22 and 25, 1957, the work of installing eleven steel girders in Bridge No. 264-10 was assigned to and performed by a General Contractor, whose employes hold no seniority rights under the provisions of this Agreement. In the performance thereof, the Contractor utilized six employes and a crane operator on each of the dates in question.

Steel girders of a similar type and weight have been heretofore installed by the Carrier's Bridge and Building employes, using equipment owned by the carrier. In fact, the Carrier used its Crane No. X-0033, operated by Claimant Northrop, to unload the afore-mentioned steel girders at Bridge No. 264-10.

The Claimants were available, fully qualified and could have expediently performed the work assigned to the contractor's forces.

The Agreement violation was protested and the instant claim filed in behalf of the Claimants.

The claim was handled in the usual and customary manner on the property, but was declined at all stages of the appeals procedure.

built and since present Rule 52 (b) was adopted. Not many jobs of this kind have occurred on the Clover Leaf District since 1950, but there were a few similar jobs since that time which were contracted out as follows:

Bridge 321.92 (1952)	4 spans	41 ft.	6 in.	42,000 lbs. per span
Bridge 360.86 (1957)	1 span	63 ft.	0 in.	86,000 lbs.

On occasion when a wrecking crane was available in the Mechanical Department we have used mechanical forces and the wreck crane to set girders as follows:

Bridge 424.88 (1951)	9 spans	30 ft.	0 in.	18,000 lbs. per span
Bridge 425.48 (1952)	3 spans	27 ft.	10 in.	17,500 lbs. per span
Bridge 329.92 (1952)	1 span	31 ft.	0 in.	25,400 lbs.
	2 spans	25 ft.	0 in.	15,400 lbs. per span
Bridge 283.25 (1953)	1 span	40 ft.	0 in.	29,400 lbs.

But a wreck crane was not available in this instance, and if it had been it would have been manned by mechanical forces as no one else is permitted to use that equipment.

The instant case is the first of its kind and is an effort to exact a penalty from the Carrier for following the same procedure that has been in effect over the years and during the entire life of Rule 52 (b). The work in question here was but a small fraction of the over-all project and required special equipment and skill. That procedure was consistent with and not in contravention of Rule 52 (b) and all other rules of the agreement and the Employes have not and cannot show otherwise.

The claim is entirely without merit and should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The essential facts are not in dispute. In May of 1956 the Carrier started replacement of a timber pile trestle over the Wabash River at Cayuga, Indiana, with a new, eleven-span, wide-flange, steel-beam structure. Construction was completed on September 9, 1958. Carrier used its own forces in this construction except for the erection or placing of eleven structural steel spans, which work was performed under a contract with a Chicago, Illinois construction firm. The contractor used a 60-ton crane and seven of its employes to install the spans.

The named Claimants hold seniority rights in the Bridge and Building Department under classification of Crane Operator, Foreman, Assistant Foreman, and Carpenters within the coverage of the effective Agreement in evidence. The Brotherhood contends the "contracting out" of the work described above was a violation of the scope and classification rules of the Agreement.

Rule 52 (b) is applicable and controlling here. In pertinent part, it reads:

> "All work of constructing, maintaining, repairing and dismantling buildings, bridges, turntables, water tanks, walks, platforms, highway crossings and other similar structures, built of brick, stone, concrete, wood or steel, and appurtenances thereto, shall be performed by employes in the Bridge and Building Department. This work may be done by contract where there is not a sufficient number of employes avail-

able or the railroad company does not have proper equipment to perform it."

As a special rule paramount to general rules dealing with the same or similar subject matter, Rule 52 (b) must be strictly construed to mean that all work described therein must be performed by B&B Department employes with but one exception — such work may be performed under contract when either a lack of available employes or proper equipment prevents its being done by Carrier's own forces. To avail itself of the protection afforded by the foregoing exception, the Carrier necessarily has the burden of showing that the facts of the case fall within the terms of the exception to the rule.

The Board finds Carrier's affirmative defense, based upon credible evidence that it lacked proper equipment to perform the work of erecting and placing the steel bridge spans, is persuasive. The record discloses that the only Carrier-owned equipment available to perform the work at the construction site was a 25-ton crane. Its rated capacity at the minimum boom length required to handle the work of installing the beams, each of which weighed 26,400 lbs., was between 10,500 and 12,700 lbs., thus obviously insufficient to meet the job requirements. Another crane owned by the Carrier, rated as a 50-ton crane when equipped with outriggers, was in use some 400 miles away from the bridge site. It was assigned to and operated by employes on the Carrier's Wheeling Division who are not within the coverage of the Agreement in evidence. In addition to its not being available, (See Award 2338), this crane's capacity to handle the work in question was also shown to be inadequate. Its boom capacity at the radius required — 37 feet — was about 20,000 lbs., some 6,400 lbs. less than the weight of each span handled.

Under this uncontroverted evidence, the Board concludes that the work here contracted for fell within the exception provided by Rule 52 (b) and that, therefore, the Agreement was not violated.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of October 1964.