



Award No. 14983

Docket No. MW-15870

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Gene T. Ritter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

GULF, MOBILE AND OHIO RAILROAD COMPANY

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

(1) The Carrier violated the Agreement when it assigned repair work on Bridge No. C-501 on the Warrior Branch (Seniority District No. 2, Southern Region) to forces outside the scope of the Agreement (Carrier's file E-41-122).

(2) B&B Foreman C. C. Turner, Road Carpenter J. L. Turner, Road Carpenter Helper G. E. Warren, B&B Laborers Earnest Worthey, Ezra Small, Henry Goodson, Joldie Smith, Nora Bridget, Charlie Williams, Bennie Jones, and Henry D. Payne each be allowed pay at their respective straight-time rates for an equal proportionate share of the total number of man hours consumed by outside forces in performing the work referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: Commencing on or about December 1, 1963, the Carrier, without prior negotiation with or the concurrence of the employees' authorized representatives, assigned the work of repairing Bridge M/C.501 to outside forces.

The work consisted mainly of constructing two new piers (Nos. 1 and 2), including excavation to an underlying rock formation, chipping out and drilling holes therein for rock anchor bolts, constructing and placing forms, pouring concrete, removing forms and backfilling; assembling and erecting a new prefabricated steel bent on Pier 2; and installing a new steel span between Piers 1 and 2.

The claimants were available and fully qualified to perform the subject work, having theretofore performed work of a similar nature and character on the very same bridge, as well as in connection with the construction of piers and the installation of steel spans on bridges at Selmer, Tennessee; Shannon, Mississippi; and Pontotoc, Mississippi; using tools and equipment furnished by the Carrier.

Claim was timely and properly presented and handled at all stages of appeal up to and including the Carrier's highest appellate officer.

The Agreement in effect between the parties to this dispute dated April 28, 1950, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Facts.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: This claim involves the reconstruction of a bridge at Holt, Alabama. The bridge is over 25th Avenue, which is a congested thoroughfare. At places, the bridge is 58 feet from the base of the rail to the ground. The rail traffic over the bridge is extensive, leading to several important industries requiring frequent service, thus limiting the time that the railroad could be out of operation.

The work on the bridge was divided into three stages. The first stage was scheduled from November 9, 1960 to February 10, 1961. The second stage from October 17, 1961 to March 16, 1962 and the final stage from October 15, 1963 to May 15, 1964. Prior to the reconstruction, the bridge consisted of 23 panels of open deck pile trestle. The reconstructed bridge consists of one panel, ballast deck, pile trestle on the west end, 1-52 foot steel deck plate girder span on a concrete pier on the west end and a steel bent supported on concrete caissons on the east end, and 19 panels of ballast deck timber trestle on the east end. Most of the bents are framed on concrete pedestals.

It was during the latter stage of the reconstruction of this bridge that it was essential that a small part of the reconstruction (5.9% actually) be done by an outside contractor. The footings for Pier No. 2 had to be situated on solid rock, which was located approximately 10 feet below the surface of the ground. This pier was closely adjacent to bents supporting the then existing railroad bridge. It was near and below the highway. The excavation through earth and rock was done with the use of steel shells, limiting the working room available.

The contractor, who performed this work, specializes in the installation of caissons and other difficult foundations for bridges and buildings. The contractor was from Birmingham, Alabama.

It was necessary for the workmen to work in a steel pipe, 3 feet in diameter. This was to prevent the collapse of the excavation as it progressed. As an example of the extreme hazard and difficulty of the work, the lowest bid the Carrier could obtain was \$378.30 per cubic yard for earth excavation and \$243.75 per cubic yard for rock excavation.

The erection of the structural steel involved the erection and placing of a 51 ft. 8 in. steel span. The railroad did not own the proper cranes to place this span in accord with the best procedure of performing this construction. It was necessary for the contractor to have two cranes operated from the highway. It was also necessary for the contractor to furnish insurance to relieve the railroad company of any and all liability to the public and to his own employees because of this hazardous work.

OPINION OF BOARD: This dispute involves the reconstruction of a bridge at Holt, Alabama. Prior to reconstruction, the bridge was made of wood. The reconstructed bridge was wood and steel. Work on reconstructing the bridge was performed partially by employees (14,948 man hours) which consisted of installing the wooden portion. The outside contractor installed

all of the steel portion (942 man hours). In defense of this claim, Carrier contends that employees did not possess the necessary skill to perform the contracted work; that the contracted work required special equipment not available to employees; and that the contracted work was of such a hazardous nature that it would be unsafe for employees to attempt. Carrier's contentions are supported by a letter written by the Chief Engineer to the General Chairman dated July 16, 1964. In this letter, detailed information of the bridge and its reconstruction were set out. In response and on appeal of this Claim to Carrier's highest appellate officer, the Organization's representative took exception, supported by statements of B&B employees, that the work subject to this Claim could have been performed by Carrier forces and Carrier equipment.

This Board finds that in this instance, Carrier acted at all times in good faith and did not act arbitrarily. Carrier, if it had attempted to arbitrarily violate the provisions of the agreement, would have contracted the entire reconstruction involving 15,890 man hours. This it did not do. The employees performed over 94% of the work, which is strong evidence showing that employees were allowed to do all the work they were capable of doing with available equipment.

There being no provisions in the agreement requiring Carrier to confer with the Organization prior to contracting outside work, and based on the evidence, we are of the opinion Carrier acted within its rights in this instance.

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

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees 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 30th day of November 1966.