

 Award No. 19154
Docket No. MW-19168

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
THE TEXAS AND PACIFIC RAILWAY COMPANY**

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

(1) The Carrier violated the Agreement when, without prior notice to General Chairman M. A. Christie as required by Article IV of the May 17, 1968 National Agreement, it assigned the work of driving piling and stripping bridges in the vicinity of Derry, Louisiana to outside forces. (System File K-310-63)

(2) Foremen C. C. Mudford and R. L. Robertson, Assistant Foreman W. W. Calhoun, B&B Mechanics T. Kerry, Jr., L. D. Williams, W. C. Daniels, R. J. St. Romain and J. A. Brown, B&B Helpers G. W. Rivers, W. J. Rector, M. R. Beebe and E. E. Taylor and Pile Driver Engineer P. L. Quinn each be allowed pay at their respective straight time rates for an equal proportionate share of the total number of man hours expended by outside forces in performing the work referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The claimants hold seniority in their respective classes within the Bridge and Building Subdepartment except for P. L. Quinn who holds seniority in the pile driver engineer's classification under the provisions of the April 29, 1950 Memorandum of Agreement which reads:

"MEMORANDUM OF AGREEMENT

Between
THE TEXAS AND PACIFIC RAILWAY COMPANY
and the
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES,
Establishing
**SEPARATE SENIORITY ROSTERS FOR PILE DRIVER
ENGINEERS AND PILE DRIVER FIREMEN**

It is Agreed:

Seniority of Pile Driver Engineers and Pile Driver Firemen will be established for each class separately, with a seniority date as of the date such employees were assigned to such positions.

7. Conference was held on March 30, 1970, at which time the Carrier pointed out that in view of the practice on this property, and the general nature of the Scope of the MofW Agreement, the provisions of Article IV of the May 17, 1968 Agreement had not been violated. In addition, the Employees were furnished a list of projects on which contractors were used since the present MofW Agreement became effective. The Employees have never denied that no B&B employee suffered any loss of earning as result of the contracting of the bridge work here in dispute. The Director's letter confirming the conference is quoted below for your ready reference:

"April 2, 1970
K 310-63

Mr. T. G. Hawkes, Jr.
First Vice Chairman—MofW
208 Earlee Bldg.
Longview, Texas 75601

Dear Sir:

Reference to our conference on March 30, 1970, of your claim filed on behalf of B&B Employees C. C. Mudford, T. Kerry, Jr., L. D. Williams, W. C. Daniels, G. W. Rivers, W. J. Rector, M. R. Beebee, R. L. Robertson, W. W. Calhoun, R. J. St. Romain, J. A. Brown, E. E. Taylor and P. L. Quinn for the number of man hours consumed by the Austin Bridge Company's employees driving concrete piling and stripping bridges in the vicinity of Derry, Louisiana, beginning April 28, 1969.

During the conference you were reminded that the Scope of the MofW Agreement did not cover the disputed work as evidenced by the fact there has been a long established practice of contracting bridge repair and reconstruction work to outside contractors. You were furnished a list of such contracts which have been entered into subsequent to the present MofW Agreement. Of course this practice prevailed on this property for many years prior to the date of the present MofW Agreement.

In view of the foregoing, we cannot change the decision given you in our letter dated January 9, 1970 declining the claim.

Yours truly,

/s/ O. B. Sayers"

OPINION OF BOARD: The Organization contends that Carrier violated Article IV of the May 17, 1968 National Agreement when it failed to give written notice to the Organization at least 15 days prior to contracting out bridge renewal work to outside contractor.

The issue as to notice is similar to the issue in Award 19153, and for the reasons therein, we find that Carrier violated the specific requirements of Article IV of the May 17, 1968 Agreement when it did not give the required 15 days' written advance notice of said contracting out of the disputed work to the Organization.

Inasmuch as Claimants were working and suffered no pecuniary loss, we will deny their claims for damages.

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 violated in accordance with the Opinion.

AWARD

Part (1) of the Statement of Claim is sustained.

Part (2) of the Statement of Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 21st day of April 1972.