

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21533
Docket Number MW-21417

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employees
(Burlington Northern Inc.

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

(1) The Carrier violated the Agreement when it assigned outside forces to excavate and drive piling for a turntable and for floodlight towers at Northtown Yard, Minneapolis, Minnesota /System File T-M-135C/MW-84(c) 8/22/74 A7

(2) Group 1 Machine Operators F. Thiel, V. Klingelhofer, C. Carlson, F. Swanson, E. Griffith, L. Olson and L. Fields each be allowed thirty-three (33) hours and ten (10) minutes of pay, Group 2 Machine Operators C. Starkka and W. Mercier each be allowed twenty-eight (28) hours of pay and B&B employees L. Schauff, H. Borg, H. Saker, O. Olson, H. Rydberg, D. Schober, M. Miller, C. Nordquist, W. Pollo, H. Zierden, H. DeYaeger, D. Karnowski, J. Lecy, P. Kepner, J. Wyers, S. Lippert, K. Walz, M. O. Anderson, P. Havel, M. E. Anderson, N. Rasmusson, C. Soderberg, M. Russell, R. Lahr, L. Johnson, D. C. Lippert, R. Soderberg and C. Beliveau each be allowed forty-one (41) hours of pay at their respective straight-time rate because of the aforesaid violation.

OPINION OF BOARD: This dispute involves the contracting out of the driving of piling for the foundations for a turntable and footings for floodlight towers at Carrier's Northtown Yard in Minneapolis, St. Paul. It is undisputed that Carrier contracted out that portion of the work described above which consumed approximately 1027 man hours of work. The Carrier advised the Organization of its intention to contract the work, as provided by the Agreement. The Organization disagreed with the necessity for such action, precipitating this dispute.

The Note to Rule 55 of the Agreement provides that work may be contracted by Carrier when special skills are not possessed by Carrier employees and where special equipment is not owned by Carrier and when the Carrier is not adequately equipped to handle the work, among other reasons. In the instant case there is no question but that Carrier had employees with the skills to perform the work. The crux of the matter is whether or not Carrier had the requisite equipment available to perform the pile driving.

A study of the handling of this dispute on the property reveals a persistent conflict with respect to the issue of whether or not the Carrier had equipment capable of **performing** the work in question. The Petitioner insisted that there was equipment available at some point cm the system which was capable of handling the pile driving; the Carrier just as **adamantly** asserted that the equipment was not available and could not **perform** the needed work in the first instance. The **entire** matter turns primarily on whether or not the Carrier had the equipment to do the pile driving. It is **long** established, **and** for obviously sound reasons, that this Board **cannot** resolve conflicts in evidence. Therefore, we are **unable** to make a **determina-**tion as to whether there was equipment available which could have performed the needed work: the Claim must be dismissed.

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 Rmplies 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 there is an irreconcilable conflict in evidence.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

C. W. Pauler
Executive Secretary

Dated at Chicago, Illinois, this **19th** day of **May** 1977.

