

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22156
Docket Number m-22169

Abraham Weiss, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way **Employes**
(Missouri Pacific Railroad Company
((Former Chicago & **Eastern Illinois** B.R. Co.)

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

(1) The Carrier violated the **Agreement when** it refused to permit Crane Operator J. L. **Eagan** to displace a M.P. Crane Operator at Ellis, Illinois during January, February and March, 1976 (Carrier'8 File **K 214-74/cc:** 247-5050).

(2) Mr. J. L. **Eagan** now be allowed the **difference between what he** would have been paid at the crane operator's rate and what he **has** been paid at the carpenter's rate during the period referred to in Part (1) hereof."

OPINION OF BOARD: Carrier, Chicago and Eastern **Illinois** Railroad Company (**C&EI**), contracted **out the work of heavy bridge reconstruction** and maintenance to a Missouri Pacific Bridge gang, **comprised of Maintenance of Way Employes. Missouri** Pacific had acquired control of Carrier in 1968, but at the time the work in dispute was contracted **out**, the two carriers operated as separate corporate entities.

The claim arose when the Crane (**BC-24**) that claimant operated on the **C&EI was transferred to the Missouri Pacific**. At the same time, another crane (X-35) was being operated on Carrier'8 property by a Missouri Pacific (**MP**) hoisting engineer, **member of the MP** Bridge gang to whom the bridge **reconstruction** work had been contracted. Petitioner contend8 that claimant, holding seniority as a crane operator with **C&EI**, should have been allowed to displace **the MP** hoisting engineer **operating** the X-35 crane **on C&EI's** property. Since claimant was **not** permitted to displace the X-35 crane operator, he exercised his seniority to carpenter work, a lower-rated position. The claim is for the difference **in** pay between the carpenter's rate and what he would have **earned** as a crane operator, had not Carrier, Petitioner alleges, violated the Agreement. Petitioner hold8 that the violation

arose **when** Carrier denied claimant **the** right to displace **the MP** crane operator who, with no **seniority** on the **C&EI**, was used to operate a crane **on the C&EI, in** preference to claimant who held seniority rights as a **C&EI crane** operator.

Petitioner's -posture, in brief, is that claimant should have been permitted to exercise his seniority rights to displace a member of the Missouri Pacific System Bridge gang, to **whom** Carrier had contracted major bridge reconstruction work on Carrier's **property**.

The record shows that Petitioner never denied Carrier's repeated statements **that C&EI** had long followed a pattern and practice of contracting out major bridge reconstruction and similar large projects, including using the Missouri Pacific as a contractor. Also, **C&EI** never had a B&B **gang** for system-wide **bridge reconstruction work** or for building construction. (See **Third Division Award 11465** involving **the same** parties.) Accordingly, we may accept such past **practice as established fact**.

The prior Organization General **Chairman** on the **C&EI** had concurred in the use of **the MP System Bridge** gang on **the C&EI** for Bridge Reconstruction projects with the understanding that no **C&EI** Bridge **employees** would be furloughed while the MP gang was on **C&EI property**.

Carrier notified the current **Organization General Chairman** of the intention to subcontract the work involved in this instant case. **The** General Chairman rejected Carrier's proposal, **without advancing** any reason, but filed no claim protesting subcontracting the work to **the** Missouri Pacific until the removal of the crane from **C&EI** property to **the** Missouri Pacific.

The Organization also cites the Scope **Rule** of its Agreement with Carrier. The Scope Rule is general in nature and this Board has **ruled**, too often to require citation, **that** a Scope Rule of the type herein involved does not grant exclusive jurisdiction to the employees **covered** by the **Agreement** to the work in question. To reserve and retain jurisdiction, **the** Organization has to show by history, tradition and custom, system-wide, **that** the employees for whom it is making the claim have customarily performed the work and have done so to the exclusion of others. No such showing **has** been made by the Organization **which** would establish such a right, in the record before us.

Petitioner **has** not challenged the propriety of Carrier's subcontracting the work. Such challenge would have fallen in light of the **uncontroverted** evidence of past practice of contracting out the type of work at issue **in this** case.

Absent **exclusive** jurisdiction under **the** Scope Rule, and given **the** substantial evidence of **the** practice of subcontracting, not denied by **the** Organization, Petitioner's claim to a contractual right under **the** seniority rules to perform **the** work **in** question **must** fail. The seniority roles **merely govern** the order of assignment to work **that** is available to members of a craft under the Agreement. As previously noted, **Petitioner** has made no showing **that the** work of **major** bridge reconstruction **has** been **reserved** to **it**, or, for **that** matter, that such work has been performed by Carrier **employees** on Carrier property. Petitioner **has** not demonstrated a **right** to the work claimed. In essence, **Petitioner's claim** would enable **claimant** to exercise seniority **among** an outside contractor's work force **(such** as the **MP** Bridge gang) performing work on Carrier property. Claimant does **not have this** right under **the** terms of **the** Organization's Agreement with this Carrier.

For the reasons stated **above**, **we must conclude** that the claim lacks merit and **must**, therefore, be denied.

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.

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Docket Number MN-22169

Page 4

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A.W. Pauls*
Executive Secretary

Dated at Chicago, Illinois, this 31st day of July 1978.

