

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26072

Docket Number MW-26030

Marty E. Zusman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(St. Louis Southwestern Railway Company

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

1. The Carrier violated the Agreement when it assigned outside forces to perform grouting work at the Cimarron River Bridge between Liberal and Bucklin, Kansas from November 17, 1982 through December 22, 1982 (System File SSW-P-725).

2. As a consequence of the aforesaid violation, furloughed B&B employees K. C. Sory, H. W. Hogue, G. D. Harrell, R. L. Olson and T. E. Rieson shall each be allowed two hundred sixty-four (264) hours of pay at their respective rates."

OPINION OF BOARD: By letter of October 12, 1982, the Carrier notified the Organization in compliance with Article 33 of the Agreement of its intent to utilize an outside contractor for bridge repairs. Carrier's stated reasons included lack of employee expertise and lack of required equipment. A conference was held on October 18 and 19, 1982, wherein the Organization rejected the Carrier's position and indicated it would progress Claims on behalf of furloughed employees.

The instant dispute was initiated by the Organization on January 14, 1983, on behalf of five furloughed B & B employees in conjunction with the events referred to above. In that letter, the Organization pointed to the fact that outside contractors had worked five (5) employees for thirty-three (33) days in bridge repair work that came under the scope of the Agreement and was therefore in violation of the December 11, 1981, Agreement (Article 33 of the BMWE Agreement on property). Specifically, that Carrier had failed to "assert good-faith efforts to reduce subcontracting by the procurement of rental equipment and have Maintenance of Way Employees operate such". It was asserted by the General Chairman that the contractor had rented the equipment which the Carrier had made no attempt to secure. Even further, that the equipment was the "standard air compressor, pneumatic drill and standard concrete grout machine".

The Carrier on the property asserts that the B & B Department lacked the expertise, that the work would have taken twice the time and in its letter of September 1, 1983, further states that it lacked the equipment to perform the work.

This Board has carefully studied the applicable Agreement and the record that developed on property. The Carrier does not dispute the Agreement provision which requires "good-faith efforts to reduce the incidence of sub-contracting ...including the procurement of rental equipment and operation thereof by carrier employees". The Organization asserts that the Carrier failed to put forth the effort to rent equipment. A search of the record finds that the Carrier does not dispute the Organization's allegation. It stands as fact that the Carrier put forth no effort to rent equipment which was shown to be standard operating equipment. Even further, the Carrier failed to rebut the Organization's position that the Claimants were recently hired Rock Island Railroad employees who had the necessary expertise, having specialized in the work of using epoxy and high pressure grouting while employed by the Rock Island. As such, the Organization's arguments clearly prevail and this Board finds the Carrier in violation of the Agreement. This is consistent with past Board Awards (See Third Division Award 25860).

Having found for the Organization, we now turn to the monetary portion of the claim and direct the Carrier and Organization to consult the work records to determine the exact and precise number of days and hours that contractor's forces were utilized in violation of the Agreement. Such records should be used to compensate herein named Claimants. Failing to proffer such records, the Claim is sustained as presented.

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.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: _____

Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 8th day of July 1986.

