

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(The Atchison, Topeka and Santa Fe 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 on bridges near Fairbury, Illinois beginning April 13, 1987 (System File 20-A8-8719/11-1940-20-295).

(2) The Agreement was further violated when the Carrier contracted out the above-mentioned work without giving the General Chairman advance written notification as required by Appendix No. 8 (Article IV of the May 17, 1968 National Agreement).

(3) As a consequence of the violations referred to in Parts (1) and/or (2) above, B&B Department employes R. H. Gonzales and R. Boyer shall each be allowed pay 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) hereof."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

This Claim concerns the use of an outside contractor to perform grouting work on bridges near Fairbury, Illinois, commencing April 13, 1987. The Organization contends, without dispute from the Carrier, that no notice of such intended work was provided to the Organization, in violation of Appendix No. 8 (Article IV of the May 17, 1968 National Agreement). It is unnecessary for the Board to review here the Carrier's requirement to advise the Organization of intended subcontracting work "within the scope of the applicable schedule agreement."

This Claim must be considered in two separate parts. The first concerns the use of the outside contractor to bring grouting equipment and material to the site and to mix the grout with other material and feed it into specialized, high pressured grouting equipment. The record shows that the Carrier has advised the Organization of such contracted work at least since 1974, involving 247 bridges. According to the Carrier, the Organization has not requested a conference concerning such work in any instance. In view of this, the Carrier's apparent failure to advise similarly concerning the bridge work here under review is of no convincing consequence. There is no reasonable basis to believe that the Organization would have responded differently had notice included reference to these bridges.

As to the second issue in consideration, this concerns the actual grouting work itself. The Claim contends that this work was also performed by the outside contractor. This appears to be confirmed in the Carrier's appeal response of September 24, 1987, which states in part as follows:

"My investigation revealed that the Carrier did use Burkels Company to perform grouting work on bridges on the Illinois Division. The contractor brought his equipment and material to the job sites where he mixed the grout with other material (to the exact proportion), fed it into the specialized, high pressured grout pumping equipment and injected it into the cracks, voids, etc., of the bridge structures.
(Emphasis added)

A later Carrier response (March 24, 1988) was at variance with the above quotation, stating:

"The actual grouting of the bridges is work performed by B&B employees. The contractor does nothing more than furnish the equipment and material for the grout. He mixes the material to be used at the job site where it is then fed into his specialized high pressured grout pumping equipment. B&B employes then inject it into the cracks, voids, etc., of the bridge structures.
(Emphasis added)

The Carrier's Submission supports the latter view, stating, "The actual work of applying the grout to the bridge was performed by members of Carrier's B&B Gang who were assigned to this project."

If the grouting itself was performed by B&B employees in this instance (apparently in keeping with previous practice), the Board finds no basis to sustain the Claim. As noted above, this is in full conformity with virtually uniform past practice. On the other hand if, as claimed by the

Organization and initially stated by the Carrier, the grouting was performed by the contractor's employees, this gives credence to the Claim. If such were the facts, the Carrier not only failed to give advance notice but permitted the grouting work to be performed by other than its own employees who, according to the Carrier, normally perform the work.

The parties are directed to review the facts of this occurrence from available records. If it is shown that the grouting work was not performed in the usual manner by B&B forces, the Claim is sustained; otherwise, the Claim is denied.

The Carrier further argues that there should be no monetary remedy, since the Claimants were under pay at other work at the time. While this view is supported by some previous Awards, the Board does not find this applicable here, given the lack of required advance notice, the irrecoverable loss of work, and the distinct variation from past practice of assigning the grouting work to Carrier employees.

A W A R D

Claim disposed of in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of March 1991.