

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29938
Docket No. MW-30113
93-3-91-3-550

The Third Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Terminal Railroad Association of St. Louis

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

- (1) The Carrier violated the Agreement when it assigned outside forces (Osmose Concrete Railroad Contractors) to repair and reface head walls as well as removal of crossties in connection therewith on the piers at 6th Street, the Merchants Bridge and Merchants Elevated in St. Louis, Missouri (System File 1990-17/013-293-14).
- (2) The claim* as presented by General Chairman Keith Roberds on August 20, 1990 to Chief Engineer William Gilbert shall be allowed as presented because Mr. Gilbert failed to disallow the claim in accordance with Rule 42.
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, B&B employes K. Roberds, S. Wolf, T. Killian, J. Wilson, A. Cracchiolo, C. Lovett, C. Carrico, A. Rameriz and J. King shall each be allowed:

'*** eight (8) hours regular time, two (2) hours at time and one-half and for eight (8) hours at time and one-half due to the contractors working more than eight (8) hours each day and weekend days.'

This claim shall be considered continuing until said work is stopped. This claim shall also be considered retro-active back sixty (60) days from date of this letter.

*The initial letter of claim will be re-produced within our initial submission."

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 employe 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.

On March 22, 1990, the Carrier's Chief Engineer issued a letter to the Organization advising it of its intent to contract out concrete repairs to various bridge piers and abutments. The letter explained the Carrier was in the process of increasing its bridge maintenance forces by seven employees to perform steel repair work, but that it was not economically feasible to hire and train an additional concrete crew and purchase the necessary equipment. According to this letter, there were no furloughed bridge maintenance employees at the time.

The parties met in conference on March 29, 1990, to discuss this matter. At that time, the Carrier advised the Organization as to the general locations where the work would be performed. By letter dated May 9, 1990, the Carrier provided more specific information as to the work sites. Although the Organization did not concur, the Carrier proceeded to contract out the work. The contractor commenced work on June 5, 1990, and concluded on September 25, 1990.

Initially, the Organization asserts the Carrier failed to deny its August 20, 1990, claim in a timely manner. The Organization avers the Carrier's letter of denial arrived in an envelope postmarked October 30, 1990. The Carrier insists the letter was mailed the day it was written, October 19, 1990. The Carrier notes the envelope submitted by the Organization contained only 45 cents postage, but the letter indicates it was sent certified mail, return receipt, which would require \$2.29 in postage. We conclude there is insufficient evidence before the Board to find the Carrier's denial was not sent within the applicable time limit.

Article IV of the May 17, 1968, National Agreement provides as follows:

"ARTICLE IV - CONTRACTING OUT

In the event a carrier plans to contract out work within the scope of the applicable schedule agreement, the carrier shall notify the General Chairman of the organization involved in writing as far in advance of the date of the contracting transaction as is practicable and in any event not less than 15 days prior thereto.

If the General Chairman, or his representative, requests a meeting to discuss matters relating to the said contracting transaction, the designated representative of the carrier shall promptly meet with him for that purpose. Said carrier and organization representatives shall make a good faith attempt to reach an understanding concerning said contracting, but if no understanding is reached the carrier may nevertheless proceed with said contracting, and the organization may file and progress claims in connection therewith.

Nothing in this Article VI shall affect the existing rights of either party in connection with contracting out. Its purpose is to require the carrier to give advance notice and, if requested, to meet with the General Chairman or his representative to discuss and if possible reach an understanding in connection therewith.

Existing rules with respect to contracting out on individual properties may be retained in their entirety in lieu of this rule by an organization giving written notice to the carrier involved at any time within 90 days after the date of this agreement."

In connection with the above Agreement, the carriers, through the National Railway Labor Conference, assured the Organization they would "assert good-faith efforts to reduce the incidence of subcontracting and increase the use of their maintenance of way forces to the extent practicable, including the procurement of rental equipment and operation thereof by carrier employees."

The Board has reviewed the record in this case and concludes the Carrier was in full compliance with the requirements of Article

VI of the May 17, 1968, National Agreement. Furthermore, we find the Carrier's use of a contractor to perform this work was justified and not in violation of either the letter or the spirit of the above commitment. It is evident the Carrier lacked both the equipment and personnel to perform the work that it had contracted out. There is no indication the Carrier failed to act in good faith. Its obligation was to increase the use of its own employees, not to increase the size of its work force. With all of its employees working, plus the hiring of seven new employees, the Board finds the Carrier did not violate the Agreement.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin
Catherine Loughrin Interim Secretary to the Board

Dated at Chicago, Illinois, this 2nd day of December 1993.