

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 29982
Docket No. MW-28846
93-3-89-3-242

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Union Pacific Railroad Company (former
(Missouri Pacific Railroad Company)

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

- (1) The Agreement was violated when the Carrier assigned outside forces to perform bridge construction work at Bridge 0.91 on the Georgetown Branch of the Austin Subdivision beginning January 10, 1988 (Carrier's File 880121 MPR).

- (2) As a consequence of the aforesaid violation:

'Time is being claimed for an equal proportionate share of the man hours consumed by contractor's employees performing the work in question, beginning January 10, 1988, and continuing so long as the work is performed by an outside concern, for eight (8) hours each work day, including any overtime, for members of System B&B (Concrete) Gang 9312: R. E. Robertson (foreman, SSN 435-68-4652), W. L. Birdow, Jr. (Assistant foreman, SSN 465-88-3588), Hoisting Engineer P. L. Quinn (SSN 437-30-0963), and Carpenters G. L. Cook (SSN 433-90-9717), C. F. Ward (SSN 449-90-9994), K. B. Pace (SSN 458-06-0916), T. E. Wilson (SSN 431-11-6021), R. L. Sanders (SSN 436-37-4423), F. O. Blalock (SSN 451-31-2911), H. H. Armstrong (SSN 463-06-6955), J. L. Pettiet (SSN 454-74-8016), and J. Jackson, Jr. (SSN 437-30-0963), and members of System B&B (Concrete) Gang 9313: C. S. Baldwin, Jr. (foreman, SSN 436-88-7789), D. L. Gallien (assistant foreman (434-11-6594), Hoisting Engineer E. L. Tyler (SSN 446-62-4443), and Carpenters S. L. Tolar (SSN 433-31-8378), W. K. Griffiths (SSN 436-02-9327), L. Briffen III (SSN 439-90-

9059), R. J. Allemand (SSN 433-02-6388), R. A. Anderson (SSN 436-11-7329), H. S. Wicke (SSN 449-49-4125), and J. R. Collins (SSN 587-30-7404), and B&B Helpers M. L. Durant (SSN 456-08-8209) and D. A. Bradley (SSN 497-78-1812).'"

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 February 1, 1988, the Organization filed a claim alleging that the Carrier violated the Agreement when it hired an outside contractor to perform bridge construction work that has been historically performed by the Carrier's B&B employees.

The Carrier denied the claim, and the Organization's appeals following thereafter, contending that the work involved the construction of concrete piers; therefore, the contractor was chosen on the basis of the lowest bid for the job and also for having the specialized equipment, manpower and expertise to do the work. In addition, the Carrier alleges that its employees were not available to perform the work because they were being used on other projects.

The Organization contends that the Claimants were fully qualified, capable and available to perform this type of bridge construction work that has been customarily and traditionally performed by them in the past. With regards to the equipment, the Organization contends that the Carrier could have rented the necessary equipment from four different companies within the area.

The Board has reviewed the record in this case and we find that the Organization has not met its burden of proof that the Carrier was in violation of the Agreement when it assigned outside forces to perform the bridge construction work at issue. Therefore, the claim must be denied.

In this case, there is no notice issue involved. There was proper notice afforded the Organization when the Carrier chose to contract out the bridge work which in this case required specialized equipment and manpower to perform the tasks involved.

This Board has reviewed the Agreement, and the type of work that was performed by the subcontractor and we cannot find that the Carrier was in violation of the Agreement when it subcontracted the bridge work involved in this case. See Third Division Award 28654.

Since the Organization bears the burden of proof in cases of this kind and that burden has not been met, this claim must be denied.

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 17th day of December 1993.