

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30897
Docket No. MW-28017
95-3-87-3-574

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Duluth, Missabe and Iron Range 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 repair the BN-Saunders Bridge beginning on or about May 1986 (System Claim 34-86)
- (2) As a consequence of the aforesaid violation, the Carrier shall:

'... pay the amount of hours of each employee hired by the contractor during the length of time the contractor is on the property. This time will be divided by the amount of employees furloughed on the Missabe Division in the fall or latter part of the summer while employed on this Division during the length of time the contractor was on the property. In the event no employees are furloughed the amount will be divided between all employees working in the Proctor headquarters jurisdiction at the time the contractor is on the property. Also, the furloughed employees benefits will be extended to include Blue Cross and days credited towards their vacation requirements. This is on account of their loss of work opportunity and monetary losses.'"

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 were given due notice of hearing thereon.

By letter dated October 23, 1985, the Carrier notified the Organization that it was going to employ a contractor to perform certain abutment repairs to the Burlington Northern bridge at Saunders, Wisconsin on the Interstate Branch. With that notice, the Carrier advised the Organization of the following specifics:

"It is the intention of the DM&IR to complete Phase I repairs to the abutments of the BN Bridge over the DM&IR tracks at Saunders, Wisconsin before the end of the year. These repairs will permit continuation of BN traffic over the bridge at reduced speeds until April or May of 1986 when additional and more permanent repairs will be made (Phase II work).

Phase I work consists primarily of the installation of 72 reinforcing steel dowels approximately 28 feet long -- 35 in the south abutment and 37 in the north. The dowels are to be grouted in with epoxy resin. In addition, the bearing seats must be cleaned; the first construction joint down from the top of the abutments must be cleaned and grouted; wood shims are to be inserted behind the bridge beams; and temporary steel diaphragms must be removed and replaced.

Due to the critical nature of the work, the specialized techniques, equipment and materials to be utilized, and in consideration of potentially cold weather conditions and schedules to be met, the DM&IR intends to contract for the installation of the dowels and the cleaning and grouting of the construction joints. By means of the contract, the work by contractor is also guaranteed.

DM&IR personnel will clean the bearing seats, place wood shims behind the bridge beams, remove and replace the steel diaphragms, and provide flagging as required for DM&IR train movements.

The time to perform the above described work before very cold weather sets in is extremely short and the DM&IR intends to proceed as rapidly as possible to complete the work before the end of the year."

According to the Carrier, the Phase I repairs began on December 13, 1985 and were completed on January 28, 1986 with the work performed by an outside contractor to the extent specified in the October 23, 1985 notice. No claims were filed by the Organization with respect to the Phase I work.

The dispute in this matter concerns Phase II. At a conference on March 7, 1986, the Carrier informed the Organization of its intention to contract further repairs at the BN-Saunders Bridge. By letter dated March 12, 1986, the Carrier informed the Organization in detail about its intentions:

"A. Description of Work to be Contracted

The concrete abutments for this structure have failed by cracking and displacement over a period of years, and must be repaired to retain the structural integrity of the bridge. The contractor would provide all material, labor, equipment and supervision to perform comprehensive repairs to the bridge while maintaining rail traffic both on and under the bridge. This would be done by performing work on a part of the superstructure (carrying the BN traffic) at a time, thus leaving two of the present four tracks in service while replacing and repairing the superstructure and substructure in the area of the other two tracks. Estimated train traffic over this bridge consists of 15 to 17 trains per 24-hour-period and under the bridge at 10 to 12 trains per 24-hour-period; work will have to be coordinated and carefully controlled to advance the work under these traffic conditions. The proposed repairs to the abutments consist of the construction of 17 horizontal steel bracing struts below the track level, and of four horizontal concrete reinforced struts at the top of the abutment walls to provide lateral support from one side of the abutment to the other. Installation of these struts insures that the back wall embankment soil pressure is transmitted through the back walls will brace each other. In addition, because of the age and condition, and construction of the steel superstructure, it is less costly to replace the superstructure than to remove, repair and reinstall the existing structure.

Consequently, new steel framing members will be installed as a part of this project. The existing steel will be retained for salvage by the contractor and handled as scrap material from the job site.

B. Reasons for Work to be Contracted.

This work involves a number of different aspects such as demolition of existing concrete, removal and dismantling of the existing steel structure, removal and replacement of the timber decking; removal of grout, placement of heavily reinforced concrete sections across the face of each abutments, forming, placing rebar and pouring concrete struts from top to top of the abutments; excavation, placement of fabric, PVC drain pipe, steel ties, Elastomeric bearing pads, poured-in-place concrete struts below the tracks and extreme coordination required of the contractor with all the railroads involved, both at the bridge level and lower track level. The work area is extremely compact, the bridge length is approximately 36' and the vertical height from DMIR track to bottom of structure approximately 22'. Marshaling areas adjacent to the work site are limited and placement of specialized work equipment such as cranes, air compressors, concrete trucks and fabricated new steel will all have to be studied and executed with precision to make the work move ahead properly and promptly. Staging area for receipt of incoming material and removal of outgoing material is limited and will also have to be carefully utilized and scheduled. The work involves knowledge in a full range of construction skills by workmen who have great proficiency and experience in each of the areas where the knowledge and ability are required. It is essential that because the bridge structure has already failed, that the work proceed promptly and accurately so that no other further failure might occur.

According to the Carrier, a contractor was awarded the job on May 5, 1986. Phase II commenced June 2, 1986 and was completed on August 7, 1986. The claim in this matter was filed on June 3, 1986.

Supplement No. 3, Paragraph (a), mandates that the Carrier "... will make every reasonable effort to perform all maintenance work in the Maintenance of Way and Structures Department with its own forces." Supplement No. 3, Paragraph (b), further states that "Consistent with the skills available in the Bridge and Building Department and the equipment owned by the Company, the Railway Company will make every reasonable effort to hold to a minimum the amount of new construction work contracted."

The Carrier asserts that due to the magnitude and complexity of Phase II, the work was beyond the skills available in the Maintenance of Way employees' group in general and the Bridge and Building forces in particular and, as such, the Carrier complied with the mandate in Supplement No. 3 that it make "every reasonable effort" to have its employees perform the work. The Organization asserts that the employees were capable of performing the work and possessed the necessary skills and experience to do the job.

This Board has no doubt (and the record supports the conclusion) that with respect to the individual components of the Phase II work on the BN-Saunders Bridge, the Carrier's employees possessed the skills, ability and knowledge necessary to accomplish those tasks and, on an individual basis, competently performed those tasks in the past.

But, the record shows that the Carrier had to undertake a very complex repair operation on the highly traveled and much in need of repair BN-Saunders Bridge. That high traffic bridge was in a state of disrepair which could not be prolonged. The record shows that repair of the bridge mandated an immense commitment of manpower, required the use of several items of equipment not owned by the Carrier (drilling machine, grout pump, demolition equipment, pile driver and crane), called for detailed coordination of traffic to permit the repairs to go forward expeditiously and involved limited areas for the staging of equipment and materials. The Organization has not sufficiently demonstrated that the Carrier has performed sufficiently similar complex jobs in the past with the use of Carrier forces. Due to the over-all magnitude and complexity of the job and the constraints involved, we are satisfied that using a contractor to perform the work was permissible under the circumstances and not prohibited by Supplement No. 3.

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AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 8th day of June 1995.