

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31997
Docket No. MW-30069
97-3-91-3-485**

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

**(Brotherhood of Maintenance of Way Employes
PARTIES TO DISPUTE: (
(Southern Pacific Transportation Company
((Western Lines)**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned an outside concern (Willamette Construction Co.) to perform repairs to Bridge No. 547.67 near Shady Creek, Oregon beginning on August 15, 1989 (Carrier's File MofW 152-1122 SPW).**
- (2) The Agreement was further violated when the Carrier entered into a contracting transaction without giving the General Chairman at least fifteen (15) days' advance written notice thereof and affording him an opportunity to discuss the matter in accordance with Article IV of the May 17, 1968 National Agreement.**
- (3) As a consequence of the violations referred to in either Part (1) and/or Part (2) above, Claimants B. A. Fountain, S. R. Moore, R. N. Mills, R. G. Walter, Jr., J. H. Gillham, L. R. Schulze, A. B. Cundiff and F. Sanchez shall each be allowed pay, at their respective rates of pay, in the amount of an equal proportionate share of the total number of man-hours expended by the outside forces performing the above-described bridge repair work."**

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.

Claimants have established and hold seniority in their respective classes within the Bridge and Building Subdepartments on the Eastern District of the Oregon Division, and were assigned as such when this dispute arose. Claimants' assigned workweek was Monday through Friday, with Saturdays and Sundays designated as rest days.

During a bridge inspection at Shady Creek and Noisy Creek, Carrier detected structural damages to both bridges. As a result, Carrier put a 10 mph restriction on both bridges, and assigned Gang 1002 to commence work on the repairs which began in May. Subsequently however, Gang 1002 was directed to abandon its repair and restructure of the two bridges, and was reassigned to participate in repairs to another structure between the switches at Cruzzette MP 546.

On August 1, 1989, Carrier sent the following correspondence to the General Chairman:

"It is our intention to contract out repairs to 7 span plate girder bridge structure No. 547.67, Shady Creek, Oregon. Work will be performed on the Company's right-of-way.

The Company does not have the manpower nor equipment to perform this work.

Our right to contract this work out without first obtaining consent of the Brotherhood of Maintenance of Way Employees is clearly established."

On August 2, 1989, the Organization requested a meeting for the "purpose of clarification of all work in connection with the proposed contracting." Carrier responded on August 8, 1989 suggesting that "this matter be discussed at our next scheduled meeting." Two days later, however, on August 10, 1989, Carrier contracted with Willamette Construction Company to complete the bridge repairs on the Shady Creek Trestle. On August 15, 1989, the subcontractor began dismantling, raising and replacing of major components of the bridge structure and thereafter rewelding and strengthening the weakened areas.

The Organization submitted a claim on behalf of System Bridge and Building Gang 1002 stating that:

"It is our contention that Carrier violated the terms and provisions of the Collecting Bargaining Agreement when it elected to engage the services of an outside contractor and its employees to perform work which is the type and nature customarily, historically and traditionally performed by employees of the Bridge and Building Subdepartment."

The Organization further pointed out that Article IV of the Agreement provides that Carrier not only inform the Organization of its intention to contract out the work at issue but also obligated Carrier to meet and confer in good faith with the General Chairman prior to contracting with Willamette Construction Co. Carrier again denied the claim reiterating that "The Company's right to contract this work out without first obtaining consent of the Brotherhood of Maintenance of Way employees is clearly established and in notification No. 48 to Mr. McMahon, our intention to contract out the repairs to this bridge structure was outlined."

Article IV (Contracting Out) provides:

"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. (Emphasis added).

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 meet with him for that purpose."

Carrier planned to contract out completion of the work which Gang 1002 members were performing prior to reassigning them to other work. Nothing in this record explains or mitigates the patent violation of the 15-day minimum notification requirement of Article IV. Carrier's notification of August 1, 1989 was followed the next day by a conference request by the General Chairman. Less than 10 days later, Carrier subcontracted the work and 14 days later the subcontractor began performing the disputed work. This failure of good faith compliance with the notice and discussion provisions of Article IV requires a sustaining award.

The fact that Claimants performed the disputed work for several months until it was subcontracted out from under them obviates argument about whether the work was within the scope of the Agreement. Carrier was plainly obligated to afford the Organization at least 15 days notice of its intent to contract out that work and blatantly failed to do so. Based on Carrier's violation of Article IV of the Agreement, this claim is sustained.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 6th day of May 1997.