

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32276
Docket No. MW-31676
97-3-93-3-703

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
(Soo Line Railroad Company (former Chicago
(Milwaukee, St. Paul & Pacific Railroad Company)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it assigned outside forces [eleven (11) employees of L. H. Sowles Company] to perform Bridge and Building Subdepartment work (all work in connection with the installation of a single span pedestrian bridge at St. Paul, Minnesota) on June 5, 8, 9, 10, 11, 12, 15, 16, 17, 18 and 19, 1992 (System File C-27-92-C080-05/8-00098 CMP).**
- (2) As a consequence of the violation referred to in Part (1) above, the employees regularly assigned to the System Steel Bridge Crew on June 5, 8, 9, 10, 11, 12, 15, 16, 17, 18 and 19, 1992 shall each be compensated for eighty-eight (88) hours' of pay at their respective straight time rate of pay."**

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.

Beginning June 5, 1992, the Carrier hired L. H. Sowles Company to remove an existing pedestrian bridge and replace it with a new bridge. The outside contractor assigned 11 of its own employees to perform said work which was completed on June 11, 1992.

The Organization filed the instant claim contending that the Carrier violated the Agreement when it hired the outside contractor to perform the work in question. The Organization argued that this type of work has historically and customarily been performed by the System Steel Bridge Crew which was established for the sole purpose of performing this type of work.

The Carrier denied the claim contending that it did not violate the Agreement because the "magnitude" of the work in question and other circumstances necessitated that it hire the outside contractor. The Carrier points out that the BMW forces had never constructed a bridge of this size. The Carrier also argues that it was under a time constraint for the completion of this project and the outside contractor would have been penalized if the work had not been fully completed by August 1, 1992. Furthermore, the Carrier notes that the Claimants in this case were fully employed during the dates in question and suffered no loss because of the Carrier's decision to contract out this particular work.

The parties being unable to resolve the issues at hand, this matter came before this Board.

This Board has reviewed the record in this case and we find that the Carrier did not violate the Agreement when it subcontracted the work that involved the removal of an existing pedestrian bridge and replacement of it with a new bridge on a single center support. A review of the record indicates that time was of the essence in this project and that the contractor had agreed to complete the bridge in two days and also had agreed to pay a penalty if the bridge was not completed in that time. The main line tracks had to be shut down for a maximum time of two hours while the old bridge was removed and another two hours for the installation of the new bridge. The Carrier has demonstrated

with sufficient proof that this was a project of great magnitude. Also, there was no showing by the Organization that the employees of the Carrier had ever performed this type of large project in the past. There was a need for all types of coordination in removing the old bridge and replacing it with the new bridge and all that had to be done within strict time constraints.

This Board recognizes that the work that was performed by the outside contractor is that type of work that is normally performed by the Organization employees. Moreover, the Carrier is obligated to make a good faith effort to use its own employees and even rent equipment if necessary so that its own employees can perform the work as is contemplated by the Agreement. However, in this case, the Carrier has been able to show that there was a requirement of timeliness which would not have been met had it used its own forces.

For all of the above reasons, the claim must be denied.

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 7th day of October 1997.