

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33640
Docket No. MW-32555
99-3-95-3-464**

The Third Division consisted of the regular members and in addition Referee Robert M. O'Brien when award was rendered.

**(Brotherhood of Maintenance of Way Employes
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (former Seaboard Coast
(Line Railroad Company)**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it assigned or otherwise permitted outside forces to perform Maintenance of Way work (rebuild portion and fill portion of the Timber Ballast Deck Trestle) at Garnett, South Carolina at Mile Post S-463.1 on the Columbia Subdivision, Florence/Savannah Seniority District, Florence Division beginning November 22, 1993 and continuing [System File REF-94-42/12 (94-1069) SSY].**
- (2) The Carrier also violated Rule 2, Section 1 when it failed to confer with the General Chairman and reach an understanding prior to contracting out the work in question.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, the Maintenance of Way employees listed below shall each be allowed pay at the bridgeman's rate for an equal proportionate share of the total number of man-hours expended by the outside forces in the performance of the work in question.**

**M. A. Hudson
Joey Bath
S. J. Reese**

**W. L. Frierson
D. Pack
E. Pringle**

R. Dowling	A. McAlister
R. M. Pye	H. Kennedy
R. E. Flatt	N. Jenkins
T. C. Fitzgibbon	I. Benjamin
W. Wilson	R. Drew
G. H. Walker	D. W. Tedder
T. Rutherford	Webster"
Earl Smith	

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.

On May 28, 1993, the Carrier served notice on General Chairman Knight and General Chairman Nihoul of its intent to contract for replacement of 994' Timber Ballast Deck Trestle with 983'- 6" Precast Concrete Trestle on the Columbia Subdivision at Mile Post S-463.5, Florence Division. The Carrier alleged that contracting of this work was necessary due to the lack of sufficient manpower and equipment with which to undertake this project in the time frame required.

The Carrier met with the General Chairmen on June 4, 1993 to discuss its proposal to contract the trestle construction work at Mile Post S-463.5. However, no understanding was reached regarding the conditions under which the work would be performed. Nevertheless, the Carrier proceeded with the construction project which commenced on November 22, 1993. It was performed by the W. M. Brode Company.

On January 28, 1994, the Organization submitted a claim on behalf of 20 employees in the Bridge and Building Subdepartment. The Organization contends that these employees should have been assigned the trestle construction work at Mile Post S-463.5. The Organization estimates that 4,819 man-hours were expended by the W. M. Brode Company on this project.

Among other things, Rule 2 of the applicable Schedule Agreement memorializes the Carrier's intent not to contract construction work in the Maintenance of Way and Structures Department when the Carrier's forces and equipment are adequate and available. However, Rule 2 expressly recognizes that, under certain circumstances, contracting of such work may be necessary. In those instances, Rule 2 requires the Carrier's Chief Engineering Officer and the Organization's General Chairman to confer and reach an understanding setting forth the conditions under which the work will be performed.

The parties met in conference on June 4, 1993 as required by Rule 2. They did not reach an understanding setting forth the conditions under which the work would be performed, however. Nevertheless, for the reasons expressed by the Board in Third Division Award 26220, the Carrier had the right to proceed with the construction project utilizing the W. M. Brode Company without the Organization's concurrence.

As noted above, under certain circumstances, the Carrier has the right to contract construction work in the Maintenance of Way and Structures Department. The Carrier convinced the Board that due to the lack of sufficient manpower and equipment it had the prerogative under Rule 2 to contract the construction work attendant to the replacement of the ballast deck trestle with a pre-cast concrete trestle at Mile Post S-463.5. Therefore, the claim must be denied.

AWARD

Claim denied.

ORDER

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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 16th day of November 1999.