

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33936
Docket No. MW-32377
00-3-95-3-229**

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

PARTIES TO DISPUTE: (
(Brotherhood of Maintenance of Way Employees
(Burlington Northern Railroad

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned outside forces (Iowa Bridge and Culvert Company) to perform Bridge and Building and Roadway Equipment Subdepartment work of dismantling the Sixth Street Bridge at Burlington, Iowa beginning June 14, 1993 and continuing (System File C-93-C100-57/MWA 93-10-27B).**
- (2) The Agreement was further violated when the Carrier failed to give the General Chairman advance written notice of its plans to contract out any of the above-described work, as stipulated in the Note to Rule 55.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, System Bridge and Building employees T. A. Carman, G.D. Fielding, S. T. McCullah, T. G. Myers, M. O. Gillette, J. P. Harkendorff, Group 1 Machine Operators M. H. Lowe, S. M. Carley, Group 2 Machine Operators R. A. Nelson and R. O. Frailey shall each be allowed an equal proportionate share of the total number of man-hours expended by the outside forces at their respective rates 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.

Pertinent to this dispute, on January 6, 1991, the Carrier entered into a cost share agreement with the City of Burlington, Iowa (hereinafter referred to as "City"), and the Iowa Department of Transportation (IDOT), regarding the Sixth Street Bridge. That bridge, located in Burlington, subsequently was replaced with the wider Valley Street Bridge. In furtherance of this renovation, the City and IDOT contracted with the Iowa Bridge and Culvert Company (hereinafter referred to as "Contractor") to remove the Sixth Street Bridge. Commencing June 14, 1993, the Contractor began dismantling the existing bridge.

On July 12, 1993, the Organization submitted this claim asserting the Carrier had violated Rules 1, 2, and 5 of the Agreement. Specifically, the Organization maintained that because the Bridge was "Carrier property," it should have been dismantled by B&B employees who had built and maintained it for many years. The Organization further asserted that the Carrier's failure to give the General Chairman a 15 day advance notice of intent to contract out this work violated the Note to Rule 55.

The Carrier denied the claim, contending that the bridge dismantling was performed by the Contractor for the City and IDOT at the City's and IDOT's "sole instigation, control and expense." In support of its position, on February 23, 1994, the Carrier sent the Organization a copy of the January 6, 1991 "6th Street Bridge Cost Share Agreement."

Assuming, arguendo, that bridge dismantling work was reserved to Agreement-covered employees by explicit language or custom, practice and tradition, the Carrier is not liable when it no longer has dominion and control over the subject property on which the contracted-out dismantling work was performed. See Third Division Awards 23422, 26082, 28248, 28310, 29627, 32184, 32274, 32317, 32319 and Public Law Board No. 4768, Awards 10, 12, 15 and 27. Consequently, we find that neither the Scope Rule nor the Note to Rule 55 were violated. See Third Division Award 23422 and Public Law Board No. 4768, Award 10. Based on the foregoing, this claim is 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 22nd day of February, 2000.