

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36375
Docket No. MW-34448
03-3-98-3-73**

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

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Elgin, Joliet and Eastern Railway Company**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned outside forces to perform Bridge and Building Subdepartment work (install a new fuel oil pipeline) behind the roundhouse to the locomotive fueling station at East Joliet, Illinois on October 3, 1996 and continuing (System File SAC-20-96/UM-25-96).**
- (2) As a consequence of the violation referred to in Part (1) above, B&B Water Service Foreman F. Mau, Water Service Mechanic J. Quirk and Welder Foreman G. Karalis shall each be allowed pay for an ‘... equal proportionate share of man hours expended by the outside contracting forces beginning on or about October 3, 1996 and continuous until the job was completed at their respective time and one half rates. . . .’”**

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.

The claim in this case asserts that during October 1996, the Carrier improperly assigned a contractor to work on a diesel fuel pipeline at East Joliet, Illinois, running from behind the roundhouse for several hundred feet to the locomotive fueling station.

There is no dispute that notice and conference were held concerning the contracting out of the work. The dispute is over the nature of the work performed by the contractor.

The Organization argues that the contracted work was the installation of a “new” fuel oil pipeline and urges a sustaining award. The Carrier argues that the work was “repair” and urges the claim be denied.

The distinctions made by the parties between “new” and “repair” are understandable given the relevant Rules:

“CLASSIFICATION OF WORK RULES

Rule 2 - Bridge and Building Sub-Department

* * *

- (e) An employee who is capable in the performance of and assigned to the installation and maintenance of . . . oil . . . pipelines . . . shall constitute a water supply mechanic.**

* * *

- (j) All work described under Rule 2 shall be performed by employees of the B&B sub-department, . . .**

* * *

Rule 3 - Track Sub-department

* * *

- (d) An employe competent in and assigned to the operation of any welding device shall constitute a welder. Welders' work shall consist of all welding in connection with work in the Maintenance of Way Department covered by this agreement. . . .

* * *

(Supplement No. 1) (Tri-Partite Agreement) dated November 8, 1939

* * *

SHEET METAL WORKERS

* * *

M of W forces shall install, maintain and inspect all air, oil, water, gas, sand and steam pipes outside buildings within the agreed-upon zones, and at other points regardless of where located in or outside of buildings.

* * *

GENERAL

. . . [T]he right of the company to have repair work performed by outside contractors, agencies, etc., is not disturbed." (Emphasis added)

Therefore, the question is whether the contracted work was "new" (as argued by the Organization) or "repair" (as argued by the Carrier). If "new" work, the Organization prevails. If "repair" work, the Carrier prevails.

On the property, in arguing that the work was "new," the Organization described the work in its March 24, 1997 letter as "a new fuel oil pipeline from the area

south of the Carrier's East Joliet roundhouse to the locomotive fueling station, a distance of several hundred feet."

Similarly, on the property, in its May 13, 1997 letter, in arguing that the work was "repair," the Carrier described the work as:

* * *

"The subject repair work was performed on the diesel fuel delivery system in Joliet Yard. This system has four major components, i.e., a large 200,000 gallon fuel storage tank, approximately 1200' of 4" pipe, a 200 gal/min industrial pump to convey the fuel from storage through the pipe and the fuel terminal where the diesel fuel is delivered to the locomotives.

The 4" pipe is in two sections. There is an underground segment running approximately 300' from the fuel storage tank to the pump. The second section runs from the pump to the fuel terminal. It is this second section that is the focus of this grievance.

On June 26, 1996, the second section of pipe failed a USEPA tightness test. Although the line was determined not to be in any imminent danger, the carrier decided to have this portion of the fuel delivery system repaired to avoid a possible hazardous spill. In order to facilitate visual inspection and to shorten the overall length of the pipe, the repair of the line was accomplished by replacing it above ground."

From the above, both characterizations make sense. The Organization's characterization of the pipeline as "new" is plausible - simply put, a "new" line appeared above ground. However, as argued by the Carrier, by placing a section of the line above ground, the Carrier merely "repaired" a portion of the old line and the Carrier had the right to contract out the work.

The burden in these cases is on the Organization to demonstrate sufficient facts to show a violation of the applicable Rules. Here, the parties' showings are, at best, in conflict. Based upon the record before us, we cannot conclude with sufficient certainty whether the work was "new" as argued by the Organization, or "repair" as argued by

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the Carrier. But the burden is on the Organization. A record in conflict does not satisfy the Organization's burden.

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 18th day of February 2003.

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By Order of Third Division**

Dated at Chicago, Illinois, this 18th day of February 2003.

LABOR MEMBER'S DISSENT

TO

AWARD 36375, DOCKET MW-34448

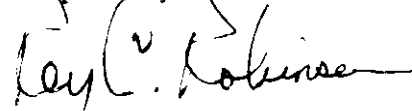
(Referee Benn)

A dissent is required because the findings of the Majority were not based on the record as it was developed on the property.

The Majority in this case strained at a gnat and swallowed a camel. There is no dispute that the work involved herein was work reserved to the Water Service Department employees by clear and unambiguous Agreement language. The only way the Majority could justify its denial of the case was to characterize the work as "repair" rather than "new" construction. That should not have been a difficult task inasmuch as the Carrier described the work as replacing the old pipe that formerly ran underground with a new pipe running above ground. Hence, the old pipe was replaced with a new pipe thereby constituting "new construction". However, in this day and age, war is peace, fear is comfort, hate is love and new construction is repair.

Award 36375 is palpably erroneous and I, therefore, dissent.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Roy C. Robinson". The signature is fluid and cursive, with a large initial "R" and "C".

Roy C. Robinson
Labor Member