

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36716
Docket No. MW-36154
03-3-00-3-344**

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

PARTIES TO DISPUTE: (
(Brotherhood of Maintenance of Way Employes
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned outside forces (Dick Corporation) to perform Maintenance of Way work (bridge repair) at the bridge at Mile Post 11.09 beginning August 17, 1998 and continuing through March 26, 1999 [Carrier's Files 12(99-615), 12(99-619), 12(99-620), 12(99-622), 12(99-627), 12(99-631), 12(99-636), and 12(99-637)].**
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with proper advance written notice of its intent to contract out said work and discuss the matter in good faith as required by the Scope Rule.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants K. G. Champa, F. R. Hoyt, J. D'Orazio, S. J. La Cavera, R. H. Zinni, K. Watts, W. D. Nicklow, F. O. Wilson, R. C. Burrows, P. J. Kolcan, K. W. Wilson, P. S. Shea, G. Pongonis, R. Sheridan, D. J. Cole, A. A. Colarusso, R. J. Crawford, W. A. Suredam, W. T. Benner and W. T. Eaton shall now each be compensated for ten (10) hours' pay at their appropriate straight time rates of pay for each date of August 17, 18, 19, 20, 21, 24, 25, 26, 27, 28, 31, September 1, 2, 3, 4, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 28, 29, 30, October 1, 2, 5, 6, 7, 8, 9, 12, 13, 14, 15, 16, 19, 20, 21, 22, 23, 26, 27, 28,**

29, 30, November 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 23, 24, 25, 30, December 1, 2, 3, 7, 8, 9, 10, 14, 15, 16 and 17, 1998, January 4, 5, 6, 7, 11, 12, 13 and 14, 1999, and each Claimant shall be compensated for ten (10) hours' pay at their appropriate time and one-half rates of pay for each date of August 22, 23, 29, 30, September 5, 6, 12, 13, 19, 20, 26, 27, October 3, 4, 10, 11, 17, 18, 24, 25, 31, November 1, 7, 8, 14, 15, 21, 22, 27, 28, 29, December 4, 5, 6, 11, 12, 13, 18, 19 and 20, 1998, January 7, 8, 14 and 15, 1999, and Claimants K. C. Champa, F. R. Hoyt, R. H. Zinni, K. Watts and P. J. Kolean shall each be compensated for ten (10) hours' pay at their appropriate rates of pay for each date of March 16, 17, 18, 22, 23, 24 and 25, 1999 and compensated for ten (10) hours' pay at their appropriate time and one-half rates of pay for each date of March 19 and 26, 1999."

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.

In this case, the Organization asserts a violation of the controlling Scope Rule when the Carrier subcontracted the work of repair/replacement of the 1,921 foot long 175 foot high bridge over the Cuyahoga River, at MP 11.09, in Cuyahoga County, Ohio. This truss span type bridge, built in 1907 by an outside contractor, consists of 25 deck girder spans of 40, 67 and 80 foot lengths, and five deck truss spans, four of which are 100 feet long. The construction is of built-up members with riveted connections, plus a main span of 180 feet, comprised of two pin-connected

trusses of built-up riveted and eye-bar members. The spans are supported by steel towers resting on concrete pedestals and two concrete abutments, also built originally by the contractor in 1907.

After ascertaining that virtual replacement of this 90-year old bridge over the Cuyahoga River was structurally necessary, the Carrier determined that the magnitude of reconstructing this particular bridge was beyond the capacity of Conrail's B&B workforce and required specialized equipment Conrail did not possess and could not rent without an operator. It is not disputed on this record that Conrail B&B forces represented by the Organization have performed the majority of bridge repairs and have replaced some other steel bridges in the past. Thus, we conclude that the work in question was subject to the following notice, meeting and good faith discussion requirements of the second and third paragraphs of the Scope Rule:

"In the event the Company plans to contract out work within the scope of this Agreement except in emergencies, the Company shall notify the General Chairman involved in writing as far in advance as is practicable and in any event not less than fifteen (15) days prior thereto. 'Emergencies' applies to fires, floods, heavy snow and like circumstances.

If the General Chairman, or his representative, requests a meeting to discuss matters relating to the said contracting transaction, the designated representatives shall make a good faith attempt to reach an understanding concerning said contracting, but, if no understanding is reached, the Company may nevertheless proceed with said contracting and the organization may file and progress claims in connection therewith."

The Carrier served notice of intent to subcontract the above-described Cuyahoga River Bridge reconstruction project, by letter to the General Chairman, dated February 19, 1998, reading in pertinent part as follows:

“As information, the Carrier intends to enter into a contract for the design, repair, and replacement of the bridge over the Cuyahoga River at MP 11.09 on the Short Line, in Cuyahoga County, Ohio.

*** * ***

The structural repair/replacement work includes but is not limited to:

- **Replacement of the 180 ft. pin-connected truss span-800,000 lbs fabricated structural steel.**
- **Bracing of tower girders - 350,000 lbs fabricated structural steel.**
- **Deck truss span replacement - 200,000 lbs fabricated structural steel.**
- **Replacement of truss expansion bearings.**
- **Reinforcement/Replacement of truss bracing.**
- **Replacement of stringer top flanges.**
- **Repair/ Replacement of floorbeam flanges.**
- **Replace the 50 deck plate girder spans - 2,850,000 lbs fabricated structural steel.**
- **Repair tower caps, bearing plates and cover plates.**
- **Rehabilitate concrete pedestals - Remove unsound concrete, replace with epoxy concrete injections and 1,800 cubic yards of concrete and 200,000 lbs of reinforcing steel.**
- **Reconstruct bridge seat on west abutment/rehabilitate east abutment.**
- **Decking replacement.**
- **Remove and replace open deck bridge ties and track.**

The Carrier is required to contract this work for the following reasons:

- 1) **The scope of this project is not work customarily performed by Conrail B&B employees;**

- 2) The magnitude of this project is such that it is beyond the skills and capabilities of our employees; Conrail forces lack the requisite expertise to complete such a project;**
- 3) There are insufficient B&B forces to perform this work even if they were qualified;**
- 4) The Carrier is not obligated to piecemeal the project to reserve portions of work for any craft or class of employee, and the design/build nature of the contract will preclude any such piecemealing;**
- 5) There are scheduling and timing constraints involved in this project which provide a limited window of opportunity to have the work completed by September 1, 1998, while maintaining train traffic flow and/or coordinating the rerouting of trains as well as meeting other work deadlines;**
- 6) This project will also require special shoring, jacking, staging, and platform construction to be able to make and facilitate the repairs;**
- 7) Due to the project magnitude it will be necessary to employ specialized equipment such as bridge jacks, (2) 250 ton capacity crawler cranes and (2) 400 ton rigger cranes and other equipment, which the Carrier does not own or have available.**

Based on the foregoing, the Carrier intends to contract the repair/replacement of this bridge."

Following written objection by the Organization and timely conference in which discussion did not result in any mutually agreeable alternative, the Carrier went forward with contracting out of the project and commenced the reconstruction on or about August 17, 1998. The Organization filed a number of virtually identical claims in which only the dates were different, asserting procedural and substantive violations of the Scope Rule by the Carrier.

The Agreement language does not specify what would serve to justify subcontracting of Agreement-covered work when a decision to contract out such work covered under the Scope Rule is grieved by the Organization. However, as a matter of practice, these Parties recognize that certain criteria generally must be demonstrated by Conrail, i.e., lack of available equipment, insufficient manpower or specialized equipment not reasonably available to or obtainable by the Carrier. Part 2 of the instant claim is denied because the record persuasively demonstrates that the Carrier did comply with the notice and good-faith conferencing requirements, supra. Moreover, careful review of the record and prior decisions regarding specialized skills, specialized equipment and carving up or piece-mealing work of such magnitude under similar circumstances involving the same issue, Parties and Agreement language, persuades us that the Organization failed to make a showing that the Scope Rule was violated by the Carrier's subcontracting of the Cuyahoga River Bridge reconstruction in this particular case. See Third Division Awards 31287, 29558, 29024, 28891 and 26850.

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 17th day of September 2003.