

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 37220  
Docket No. MW-36384  
04-3-00-3-622**

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

**PARTIES TO DISPUTE:** (Brotherhood of Maintenance of Way Employees  
(Duluth, Missabe and Iron Range Railway Company)

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- (1) The Carrier violated the Agreement when it assigned outside forces (Lakehead Constructors) to perform Maintenance of Way Bridge and Building Sub-department work (bridge flange repairs) on Bridges IT19A and IT20A on June 7 and 8, 1999 [Claim No. 37-99].**
- (2) The Carrier further violated the Agreement when it failed to timely and properly notify and confer with the General Chairman concerning its intent to contract out the above-referenced work as required by Supplement No. 3.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, the senior foreman and the five (5) senior mechanics on the Missabe Division Bridge and Building Department shall now each be allowed an equal proportionate share of the total number of man-hours expended by the outside forces in the performance of said work at their respective straight time 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.

The basic facts are not in dispute. The Carrier's Engineers examined and evaluated cracks in the lower flanges of two bridges on May 25, 1999. They showed recent growth and there was concern about catastrophic failure if they propagated further into the web of the structural members involved. Consequently, the Carrier served notice dated May 26, 1999 of its intent to contract out the repairs. The Carrier's notice cited the need for prompt action. It also noted that all Carrier forces were working on other projects. The work was completed by the contractor on June 7 and 8, 1999. However, the Organization asserts that no conference was held until June 18, 1999.

The Organization's position, in summary, is that Carrier forces could have been used to do the work by being diverted from other projects and that something could have been arranged had there been a timely conference.

The Carrier's position is that the state of the cracking created an emergency situation calling for immediate action to avert the possibility of catastrophic failure of the structural members of the two bridges. On the subject of notice, it asserted that the General Chairman received notice on May 26, 1999 and was verbally informed of the need for immediate repair work by its engineering staff before the work actually began.

On this record, it is not refuted by the Organization that it received actual notice on May 26, 1999. Nor did the Organization refute the assertions that the Carrier's engineering staff informed the General Chairman of the need to contract out the work before the contractor began. The General Chairman was informed "... that the cracks showed recent growth, with lengths of 28" (2 cracks) on Bridge IT19A and 34" (2 cracks) on Bridge IT20A, with significant movement under train loading. The location of the cracks on the bottom flange presented the possibility that the cracks could migrate into the web of the girder, a much more severe condition that could have the potential for catastrophic failure." The Organization also did not dispute the Carrier's assertion that all of its forces were fully employed and that there were no employees on furlough at the time.

This record is somewhat unusual in that the first and second responses to the claim on the property were provided by its Engineer - Bridges & Buildings and its Chief Engineer, respectively. It is undisputed that the former Carrier official is a structural Engineer. Thus the replies constitute the evidentiary equivalent of signed statements in support of the Carrier's position. These replies, which are founded upon engineering expertise, stated that the drilling of the cracks, which is the temporary repair advanced by the General Chairman, would not have sufficed. Because of the engineering expertise of the two Engineers, we must find that the Carrier's contention that emergency circumstances existed has been sufficiently supported by probative evidence. The Organization's position is not similarly supported by such probative evidence.

Supplement No. 3 of the parties' Agreement specifies the requirements for contracting of scope covered work. In emergency situations, the Supplement calls for the following:

"In emergency cases, the Carrier will attempt to reach an understanding with the General Chairman in conference by telephone if necessary, and in each case confirm such conference in writing."

**Given the unique facts of this record, we find that the Carrier did satisfy the notice requirements of Supplement No. 3 that pertain to emergency situations. It follows from the foregoing discussion that there was no proven violation of the Agreement shown by the instant record.**

**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 28th day of September 2004.**