

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 38092
Docket No. MW-37410
07-3-02-3-458**

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (
(Brotherhood of Maintenance of Way Employes
(BNSF Railway Company (former Atchison,
(Topeka and Santa Fe 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 (E-80 Plus Construction) to perform Maintenance of Way and Structures Department work (renew bearing pads) on a bridge at Mile Post 196.69 on the Texas Division in the vicinity of Quanah, Texas, “commencing on March 26 and continuing until April 3, 2001, instead of B&B Foreman A. C. Thorn and Carpenter/ Mechanics W. J. Chelf, L. E. Shoffner and P. H. Smith [System File F-01-93C/13-01-0024(MW) ATS].**
- (2) The Agreement was further violated when the Carrier failed to provide the General Chairman a proper advance written notice of its intent to contract out said work or make a good-faith effort to reach an understanding concerning said work as required by Appendix No. 8 (Article IV of the May 17, 1968 National Agreement).**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants A. C. Thorn, W. J. Chelf, L. E. Shoffner and P. H. Smith shall ‘. . . now be compensated an equal and proportionate share of all straight time and overtime hours worked by the four (4) E 80 Constructors employees**

performing this claimed work of renewing the bearing pads on the bridge located at Mile Post 196.69, commencing 26 March, 2001 and continuing until 3 April, 2001.””

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.

By letter of December 19, 2000, the Carrier notified the Organization that it would be contracting out certain bridge and concrete culvert repairs during 2001. Attached to that notice was a list of locations where the repairs at issue were expected to occur.

The instant claim was filed on January 3, 2001. The Organization maintained that the Carrier's notice was insufficient in light of the language of the Parties' Agreement. It contended that the work cited was insufficiently specific and the reasons for contracting out overly general.

The Board reviewed this case carefully. We do not find that the Carrier's notice was insufficient. Moreover, the Organization failed to prove that the work at issue was by custom and practice performed by BMW-employees. Accordingly, in the narrow circumstances of this case, we have no choice but to deny the claim in its entirety.

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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 21st day of February 2007.