

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 38093
Docket No. MW-37493
07-3-02-3-575**

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 Employees
(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 Agreement was violated when the Carrier assigned outside forces (C.E.C., Inc.) to perform Maintenance of Way work (assist in pouring concrete, driving piling and related reinforcement work) at the Bayou Beouf Drawbridge at Mile Post 73.3, Bayou Beouf, Louisiana beginning September 19, 2001 and continuing [System File JFSF-01-13/15-01-0012(MW) ATS].**
- (2) The Agreement was further violated when the Carrier failed to give the General Chairman advance written notice of its intent to contract out 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, Foreman L. Huval, Assistant Foreman M. Dekerlegand, Structures Mechanics C. Arceneaux, E. Lewis, R. Alex, Welder M. Stakes and Pile Driver Operator C. Mathews shall now each be compensated for ten (10) hours' pay per day at their respective straight time rates of pay for the Monday through Thursday dates and the Claimants shall each be compensated at their respective time and one-half rates for any**

and all other hours expended by the outside forces in the performance of the aforesaid work beginning September 19, 2001 and continuing.”

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.

On March 2, 2001, the Carrier notified the Organization of its plan to contract out the “reinforcement and stabilization of piers 5 and 6 of Bridge 73.31” near Amelia, Louisiana. By letter of October 23, 2001, the Organization filed the instant claim contending that the work at issue was reserved to BMWWE-represented employees, and it sought compensation for the listed Claimants’ alleged loss of earnings.

The Carrier denied the claim by letter of December 17, 2001. It contended that the work at issue did not fall under the Scope Rule of the Agreement. Further, it noted that the Organization had not shown that the work at issue had been performed by custom and practice solely by BMWWE-represented employees.

The Board reviewed the record with care. We find that the Carrier’s notice to the Organization was proper and met the letter and spirit of the requirements of the Agreement between the parties. The Organization presented no evidence to refute the Carrier’s assertions that the equipment needed for the bridge repair – including barges and other marine equipment – was not in the possession of the Carrier. Furthermore, the Organization has not shown that, by custom and

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practice, the particular work at issue had been performed by BMW-employees. Accordingly, we find that the Organization has not met its burden of persuasion in this case. In light the foregoing, the Board finds no basis upon which to sustain the instant claim.

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.