

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 38241
Docket No. MW-37285
07-3-02-3-295

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(The Texas Mexican 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 (Osmose) to perform Maintenance of Way and Structures Department work (posting-piling and replacing stringers, ties, caps and related bridge work) at Bridge 135.50 between Mile Posts 135 and 136 in the vicinity of Banquete, Texas on dates beginning May 4 through May 11, 2001 and at Bridge 111.69 between Mile Posts 111 and 112 in the vicinity of San Diego, Texas on dates beginning May 14 through June 15, 2001 (System File MW-01-8-TM/162).
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with a proper notice of its intent to contract out the work in question and failed to exert a good-faith effort to increase the use of Maintenance of Way forces and reduce the incidence of employing outside forces pursuant to Rule 29 and the December 11, 1981 Letter of Agreement.
- (3) As a consequence of the aforesaid violations referred to in Parts (1) and/or (2) above, Claimants L. H. Serna, Jr., J. A. Garcia, A. Garcia and J. Rodriguez shall now each be compensated for two hundred forty (240) hours' pay at their respective straight time

rates of pay and for eighty and one-half (80.5) hours' pay at their respective time and one-half 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 dispute here at issue, involving the upgrading of two Carrier main line bridges by outside contractors, is not unlike an issue that has twice been before the Board. In both instances the claims were denied. See Third Division Awards 37009 and 37963 wherein the only differences between the facts and arguments in the instant claim and the denial Awards in the two prior cases are the dates of work and the Mile Post location of the two bridges.

We again read with great care the facts and arguments of the parties and the rationale for the findings of the Board in Awards 37009 and 37963. There is no question the two bridges here at issue were covered by the same contracting notices and conferences as in the prior disputes. The positions of the parties on the dispute are found to have been advanced in a like manner.

While we are not bound to follow the decisions in the above mentioned Awards, we find that they are without question well founded. Clearly, as the findings in those prior Awards point up, nothing of record supports the argument that the Carrier was precluded by applicable Agreement language from contracting out the work at issue under the circumstances existing in this extensive bridge rehabilitation project.

In light of the above considerations and overall study of the record the Board is constrained to conclude, as the Carrier contends, that the claim before us is not a new grievance, but rather an attempt to seek a reversal of the decisions rendered in Awards 37009 and 37963. We find no reason to do so. Further, as has been stated in numerous prior Awards, it is essential that disputes once heard and settled by the Board should stay settled unless it can be shown by competent and compelling evidence that a clear change exists in facts and conditions that gave rise to a prior claim or it can be shown that the decision was palpably wrong.

The Board will accordingly follow the decisions of Awards 37009 and 37963 in the absence of a showing of error as relates to a consideration of the facts and arguments of the parties, and hold that the instant claim likewise 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 July 2007.