

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 38948
Docket No. MW-38267
08-3-NRAB-00003-040195
(04-3-195)

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

(Brotherhood of Maintenance of Way Employes
PARTIES TO DISPUTE: (
(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 to perform Maintenance of Way and Structures Department work (install bridge ties, caps, piling and related bridge maintenance work) on bridges between Mile Posts 21.0 and 24, Mile Posts 74.00 and 74.52, Mile Posts 108.00 and 108.19 and Mile Post 109.00 beginning August 19, 2003 and continuing (System File EPTM-03-113/259).
- (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 violations referred to in Parts (1) and/or (2) above, Claimant L. Serna shall now be compensated for seventy-two (72) hours' pay at his respective straight time rate of pay and twenty-seven (27) hours' pay at his respective time and one-half rate of pay for the hours expended by the outside forces in the performance of the aforesaid work for the

period beginning August 19 through 29, 2003 and he shall be compensated at his applicable rate of pay for the all hours expended by the outside forces beginning August 30, 2003 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.

By notice dated April 23, 2003, the Carrier advised the Organization:

"Please accept this letter as Carrier's advance notice of the need to sub-contract extensive rehabilitation work on the mainline between Laredo and Robstown TX., which will entail the following:

1. Relay of 15 curves involving over 17000 track feet of rail.
2. Relay of over 20,000 track feet of rail at the sidings of Killam, Hebbbronville, Benavides and Matthews.
3. Replacement of 12 mainline siding turnouts and 25 switches.
4. Rehabilitation of 47 road crossings.
5. Upgrade of 5 bridges.
6. Replacement of over 100,000 ties.

Bids are being accepted from sub-contractors and it is anticipated the work will begin within the next 30 to 45 days."

By letter dated April 29, 2003, the Carrier further detailed the work it intended to contract out.

Conference was held between the parties on May 8, 2003 and agreement was not reached on the parties' differences concerning the contracting out of the work. This claim followed.

The case is governed by Rule 29 of the parties' Agreement:

"CONTRACTING OUT

When work coming under the Scope Rule of the Maintenance of Way agreement is found to be of such nature that it cannot be performed by the regular forces of the respective sub-departments, the General Chairman will be notified in writing at least fifteen (15) days in advance of any transaction for contracting out of such work. The carrier and organization representatives shall make a good faith attempt to reach an understanding on the contracting out of the work to be performed. In event no satisfactory agreement or understanding is reached, this rule will not affect the existing rights of either party in connection with the contracting of work and does not change, alter or modify any provisions of the Scope Rule or any rules of the applicable agreement in the handling of such matters."

The Carrier's notice and conference obligations were met under Rule 29. Notice was given to the Organization by the Carrier's letters dated April 23 and 29 and conference was held on May 8, 2003. The claim states the work commenced August 19, 2003. We find the Carrier's letters sufficiently and timely put the Organization on notice of the scope and specifics of the work the Carrier intended to contract out as required by Rule 29.

This was obviously a major project. The Carrier asserted in its April 12, 2004 letter on the property that “[t]he BMW work force of Carrier is more than sufficient for its size and this Carrier cannot in any manner justify more employees and equipment expenses for special and/or unforeseen work projects.” Upon our review of the record as a whole, we find that the Organization has not shown as Rule 29 requires that the Carrier’s position that the work “. . . cannot be performed by the regular forces of the respective sub-departments . . .” is erroneous or that the Carrier acted in other than good faith as alleged by the Organization.

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 29th day of February 2008.