

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41281
Docket No. MW-40557
12-3-NRAB-00003-080073**

The Third Division consisted of the regular members and in addition Referee Patrick Halter when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
PARTIES TO DISPUTE: (
(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 (Austin Bridge and Road Construction Company) to perform Maintenance of Way and Structures Department work (replace stringers, pilings, caps and related work) at the Bridge at Mile Post 108.19 beginning on October 4, 2006 and continuing (System File WGF-06-05-TM/T04066095).**
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with an advance written notice of its intent to contract out the aforesaid work as required by Rule 29.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants L. Serna, J. Garcia, T. Vira, V. Moncivias, R. Couling, A. Jimenez, G. Vasquez and R. Guardiola shall now each be compensated at their respective and applicable rates of pay for all straight time and overtime hours expended by the outside forces in the performance of the aforesaid work beginning October 4, 2006 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.

This claim dated November 8, 2006 involves the Carrier's decision to assign outside forces to perform bridge maintenance and repair work – replacing stringers, piling, caps and related work – at Mile Post 108.19 beginning on October 4, 2006 and continuing. The Organization contends that such work is typical Maintenance of Way and Structures Department bridge work such as is customarily performed by its members. The Organization further contends that the Carrier violated the Agreement when it assigned the work to an outside contractor. Moreover, it contends, the Carrier violated the Agreement by failing to notify the General Chairman in advance, in writing, of its plans to contract out the subject work.

The Carrier responds that its use of a contractor to perform bridge rehabilitation work at Mile Post 108.19 did not violate the Agreement. The Carrier contends that work of this nature is not exclusively reserved to the Carrier's employees by the Scope Rule. Moreover, the Carrier contends that even if the work were somehow reserved in some circumstances, the Board has already found in Third Division Awards 38948, 39723 and 39725 that the extensive upgrading project on this same bridge could properly be contracted out. In addition, the work in question here is in connection with the same contracting transaction, so it has already met the notice and discussion requirements of the Agreement. The Carrier therefore urges the principle of res judicata to be applicable to this case.

A thorough review of the record and the applicable prior Awards convinces the Board that the work at issue here was a part of the same contracting transaction as was addressed in Awards 38948, 39723 and 39725. In those Awards, the Board found that the Carrier had complied with its advance notice and discussion obligations. The Board also found that the Carrier did not violate the Agreement when it contracted out this bridge rehabilitation project on this same bridge. Nothing in the record of the instant case nor in the arguments vigorously presented by the parties within their Submissions and in their presentations to the Board convinces us that the reasoning in those Awards is palpably erroneous. Consequently, we will apply the principle of res judicata and deny the claim

Finally, the Board notes that the issues and arguments raised during the handling of this dispute on the property regarding the merits of the claim were confined to the issues discussed above. Although both parties included additional information and argument in their Submissions and presentations to the Board, we confined our consideration and findings, as we must, to only those facts and contentions that were properly part of the evidentiary 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 March 2012.