

Award No. 11964
Docket No. MW-11268

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

William N. Christian, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the effective Agreement when, on March 24, 1958, it assigned the work of repairing the sheer protective fence at Bridge L-4b to a General Contractor whose employees hold no seniority rights under the provisions of this Agreement.

(2) Bridge and Building Foremen A. A. Klinnert, W. E. Harms and J. E. Walden and the members of their respective gangs on the LaCrosse and River Division each be allowed pay at his respective straight time rate for an equal proportionate share of the total man-hours consumed by the Contractor's forces in performing the work referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The west end of Bridge L-4b across the Mississippi River at LaCrosse and River Division is protected from river traffic by a sheer fence.

Commencing on March 24, 1958 the work of repairing the afore-mentioned fence was assigned to and performed by a General Contractor, whose employees hold no seniority rights under the provisions of this Agreement.

The work consisted of the removal of the damaged timbers and the replacement thereof with new timbers. The work was completed on May 6, 1958. Eight hundred man-hours were consumed by the Contractor's forces in the performance thereof.

Work of a similar character has heretofore been assigned to and performed by the Carrier's Bridge and Building Sub-department employees, using equipment provided by the Carrier.

2. Special marine equipment and skills were required, neither of which the Carrier possessed for such marine work.
3. The requirements were of an emergency nature due to potential hazards to water traffic which condition requires prompt action for correction.
4. The work involved repairing and rebuilding of structures which were damaged not by Carrier's train operation but by river traffic.
5. The Carrier has consistently contracted work of this nature and of this extent using qualified marine contractors.
6. The claim for other than the 3 named claimants is outlawed.

For the reasons outlined it is the position of the Carrier that the claim is without merit and should be denied. All basic data contained herein has been made known to the employees.

(Exhibits not reproduced.)

OPINION OF BOARD: Employees' Ex Parte Submission includes three letters as to past practice. Carrier in its Rebuttal Submission says that neither the letters nor their contents were made known to Carrier in the handling of the claim on the property. The letters are excluded from our consideration. Award 11128 (Boyd); Circular No. 1 of this Board.

The Claimants as named in the claim are:

"Bridge and Building Foremen A. A. Klinnert, W. E. Harms and J. E. Walden and the members of their respective gangs on the La-Crosse and River Division."

Carrier asserts that Section 1 (a) of Article V of the National Agreement of August 21, 1954, bars the claim as to "the members of their respective gangs." Employees urge that such Claimants have been identified by reference to their Foremen, and that the names of such Claimants are readily ascertainable. Failure to name each Claimant is hazardous procedure. In this instance we deem Award 10969 (McMillen) applicable and follow the precedent thereof:

"This Board has frequently held in interpreting the National Agreement . . . 'that Claimants need not be specifically named so long as they are readily identifiable'. In this claim there are only 3 gangs involved, and they are relatively small in number and can easily be identified by the Carrier."

The designation of Claimants is sufficient in this instance.

We turn to the merits. This is a case of contracting out work. Employees rely on a general Scope Rule (Rule 1) and a Classification of Work Rule (Rule 46 (d)). Carrier relies on non-coverage of the Agreement and past practice of contracting out such work.

The work involved is the repair of a sheer fence. The fence protects Carrier's Bridge L-4b from river traffic. The bridge is across the Mississippi River at LaCrosse, Wisconsin. The work was done with marine equipment (which Carrier does not own), including tugboats and barges, and involved some special skill peculiar to marine operation (for example, that of a river pilot).

The Employees have not sustained the burden of proving an exclusive right to the work, based upon history, custom and tradition. On the contrary, it appears that the parties have treated such work as being outside the scope of the Agreement. Award 7600 (Cluster). From the record it is clear that Carrier has contracted out similar work for years, in numerous locations and instances.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of December 1963.