Award No. 12012
Docket No. MW-11269

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 April 21, 1958, it assigned the work of reconstructing the sheer fence and the center of the bridge protective piers at Bridge L. 268 to a General Contractor whose employes hold no seniority rights under the provisions of this Agreement.

(2) The Bridge and Building Employes specified in the letter dated July 1, 1958 to Chief Carpenter A. E. Hansen by General Chairman James each be allowed pay at their respective straight time rates 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 since May 1, 1958.

EMPLOYES' STATEMENT OF FACTS: The Carrier owns and maintains a bridge, identified as Bridge L-268, across the Mississippi River at Hastings, Minnesota. The bridge is of steel construction and rests upon concrete piers. Certain of the piers are protected from river traffic by protective piers, situated adjacent to and on each side of the piers proper. The east end of the bridge is protected by a sheer fence constructed along the embankment thereof.

Commencing on April 21, 1958, the work of reconstructing the protective sheer fence and piers adjacent to Piers Nos. 2 and 3 was assigned to and performed by a General Contractor, whose employes hold no seniority rights under the provisions of this Agreement.

The work consisted of the removal of the existing sheer fence, the driving of piling at regular intervals, the bracing thereof and the securing of heavy timbers to the piling to form the new sheer protective fence and the removal

"The practice complained of is one of long standing. During its continuance there have been revisions of the contract, without correction if correction be needed, of this practice. That is persuasive that, for eleven years or more, the employes themselves have not regarded it as a violation of their contract."

The Carrier has shown:

1. Neither the Scope rule nor any other schedule rule or agreement supports the claim.

2. Service of this nature with its requirements for special equipment and skills has consistently been the subject of contract with a recognized marine contractor. The Carrier did not possess such special equipment and skilled personnel.

3. Awards of the NRAB, Second and Third Divisions, support the Carrier's position under the circumstances involved in the instant claim.

4. Emergency conditions necessitated handling in the manner as was done in this case and as was customary under similar circumstances in the past.

5. The work involved repairing and rebuilding of structures damaged by other than railroad traffic and involved other than maintenance of the bridge proper.

For these reasons, it is the position of the Carrier that the claim is devoid of merit and should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Employes' 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.

Carrier contends that Article V, of the National Agreement of August 21, 1954, bars the claim in its entirety because the claim was not filed until July 1, 1958, same being more than 60 days after the work was commenced by the outside contractor on April 21, 1958. Cases cited in support thereof do not involve outside contractors. We reject this contention and regard the claim as a continuing claim.

Carrier contends that the claim cannot be considered for any time prior to a date 60 days next preceding July 1, 1958 (the date the claim was filed). This contention is correct, in accordance with Article V, of the National Agreement.

Carrier contends that all Claimants other than T. G. Gosse were unnamed Claimants and were barred as such for dates prior to May 19, 1958. The claim designates the Claimants as "The Bridge and Building employes specified in the letter dated July 1, 1958 to Chief Carpenter A. E. Hansen by General Chairman James . . .". The letter of July 1, 1958, designates the Claimants as:

". . . The claimants are as they appear on the LaCrosse & River Division seniority roster beginning with the name of T. G. Gosse and others listed on that roster and whose seniority have not in any way been affected up to the present time." (Emphasis ours.)

By letter dated July 17, 1958 from the General Chairman to the Chief Carpenter, all Claimants were named. That part of the letter of July 1, 1958, "whose seniority have not in any way been affected up to the present time.", would require resort to evidence outside the seniority roster itself; accordingly, such employes were not described with such particularity as to make their identity known to Carrier under the circumstances prevailing, until such employes were specifically named in the letter of July 17, 1958. See Award 11372 (Dorsey). As to Claimants other than T. G. Gosse, the claim is limited to 60 days prior to July 17, 1958.

We turn to the merits. The issues on the merits herein are substantially the same as in Docket No. MW-11268, Award No. 11964. We adopt the opinion on the merits therein as determinative of the confronting claim on the merits.

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 Employes involved in this dispute are respectively Carrier and Employes 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 19th day of December 1963.