

NATIONAL RAILROAD ADJUSTMENT BOARD**THIRD DIVISION****(Supplemental)**

John J. McGovern, Referee

PARTIES TO DISPUTE:**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES****CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

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

(1) The Carrier violated the Agreement when, beginning on October 26, 1962, it assigned or otherwise permitted outside forces to repair the fender fence at Bridge L-O located near LaCrosse, Wisconsin (Carrier's Case D-1434).

(2) J. E. Walden, A. A. Klinnert and all other Bridge and Building employees listed on the 1962 seniority roster for the LaCrosse Division be allowed pay at his respective straight time rate for an equal proportionate share of the total number of man hours consumed by outside forces in performing the work referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The center pier of Bridge L-O across the Black River at LaCrosse, Wisconsin on the Carrier's LaCrosse Division is protected from river traffic by a fender fence.

Beginning on October 26, 1962, without prior negotiation with or the concurrence of the employees' authorized representatives, the Carrier assigned the work of renewing said fender fence to the River Construction Company, whose employees do not hold any seniority rights under the provisions of this Agreement.

The work consisted mainly of the removal of the existing fender fence, the driving of piling at regular intervals, and the securing of timbers to the piling to form the new fender fence.

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

The Agreement in effect between the two parties to this dispute dated September 1, 1949, together with supplements, amendments, and interpretations thereto is by reference made a part of this Statement of Facts.

LaCrosse Division * * * " lost no earnings as a result of contracting the work here involved.

There is attached as Carrier's Exhibit C copy of letter written by Mr. S. W. Amour, Assistant to Vice President, to Mr. J. G. James, General Chairman, under date of June 28, 1963.

(Exhibits not reproduced.)

OPINION OF BOARD: It appears to the Board after reviewing the instant case that the complaint of both parties is of the same nature as the subject matter found in Awards 11964 and 12012, also, between these same parties. We, therefore, hold that the conclusion reached in those cases are controlling in this case, and the claim will be denied on the merits.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 16th day of June 1967.