

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Union Pacific Railroad Company

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

(1) The Agreement was violated when outside forces were used to repair the Martha Street Viaduct at Omaha on November 26, 27, 28 and 29, 1984 (System File M-101/013-210-49).

(2) The Agreement was further violated when the Carrier did not give the General Chairman prior notification of its plan to assign said work to outside forces.

(3) Because of the aforesaid violations, B&B Foreman R. T. Branting and Carpenters K. E. Boardman, J. D. Shepard, M. J. Lenihan and J. C. Wooten shall each be allowed thirty-three and one-third (33 1/3) hours of pay at their respective straight time rates."

FINDINGS:

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

The carrier or carriers and the employe or employees involved in this dispute are respectively carrier and employees 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 waived right of appearance at hearing thereon.

On four days in November 1984, Carrier used employees of an outside contracting firm to repair a viaduct over its yard tracks in Omaha, Nebraska. The viaduct is the property of the City of Omaha but the Carrier is responsible for maintaining the structure in a safe condition for vehicular and pedestrian traffic. Notice to the Organization, as contemplated by Rule 52 of the Agreement, was not given.

The Organization filed a Claim on behalf of five B&B employees for the equivalent number of hours worked by the contractor. Carrier has defended

against payment of the Claim on a variety of grounds. It argues that the structure is not owned by Carrier thus its Agreement with the Organization does not cover the work involved. It also argues that the work required in late November was emergency in nature and thus specifically excluded from the notice requirements of the Rule. Finally, it argues that all the Claimants were fully employed and if an Agreement violation occurred they would not be entitled to compensation in any event.


Notwithstanding the niceties of which entity held legal title to the viaduct there can be no question, from the facts in this record, that Carrier was obligated to maintain the structure, which was used to facilitate the passage of vehicles and pedestrians from one side of its yard to the other. However, the record also is clear that the repairs completed were of an emergency nature. A gaping six-foot hole surely suggests a requirement for immediate action to make the structure safe. Paragraph (c) of Rule 52 provides an exception to the notice requirement when the work is of an emergency nature. Under these circumstances the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Beyer - Executive Secretary

Dated at Chicago, Illinois, this 29th day of June 1989.