

The Third Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(National Railroad Passenger Corporation (Amtrak)
Northeast Corridor

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

(1) The Carrier violated the Agreement when it assigned machine operating work in connection with removal of concrete from overhead wires at Diamond Street Bridge to an outside concern on July 11, 1986 (System File NEC-BMWE-SD-1697).

(2) The Carrier also violated the Agreement when it did not give the General Chairman at least fifteen (15) days' advance written notice of its plan to contract out the work described in Part (1) hereof.

(3) As a consequence of the violations referred to in Part (1) and/or Part (2) hereof, E.W.E. Crane Operator J. Crandley and Truck Driver E. Bailey shall each be allowed eight and one-half (8 1/2) hours at their respective straight time rates of pay and one (1) hour at their respective time and one-half overtime rates of pay."

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 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.

In July 1986, Carrier found that the concrete on the Diamond Street Bridge had deteriorated to the point that chunks of concrete were actually being supported by the catenary system. Characterizing the situation as an emergency, Carrier assigned B & B forces to remove as much of the concrete as possible on July 10, 1986, meanwhile removing one of the tracks from service due to the potential danger. The crew was unable to complete the project with

the backhoe and on the following day, with the aid of a rented Hi Rail Gradall, and the return of the same B & B crew, the situation was corrected. The Gradall was operated by the contractor's employees, although piloted by a MW Foreman. The rented equipment had been rented some six months earlier in compliance with the January 28, 1977 Equipment Rental Agreement. On the date of this incident, the piece of rented equipment was being stored pending the end of the lease period. The record indicates that Carrier had no qualified operators or similar equipment available for the urgent task at Diamond Street.

The Organization contends that the equipment was leased (and proper notification given) for one project only, and not for the activity involved in this dispute. Furthermore, the Organization maintains that this was not an emergency and, therefore, Carrier violated the Scope Rule by failing to provide the fifteen days advance notice prior to contracting out the work in question. The Organization characterizes the work as merely rehabilitation activity which was long overdue. It is also argued that the January 28, 1977 Memorandum of Agreement is not controlling in this situation since the Carrier failed to contract out the work in accordance with the provisions of that Agreement.

Carrier maintains that no rule was violated since there was indeed a serious emergency which required immediate action. Further, Carrier asserts that there was no loss or damage of any kind to Claimants herein.

An examination of the record reveals that there was indeed a serious and potentially hazardous situation at the bridge. The evidence indicates that Carrier exhausted the possibility of quickly remedying the dangerous situation with available forces and equipment. There was no Carrier owned equipment on hand which could have dealt with the concrete removal, nor were there any qualified employees available. Carrier exercised the only prudent alternative available to it in pressing into service the piece of rental equipment which had been stored (with the contractor's employees to operate it). It must be concluded, therefore, that the emergency proviso of the Scope Rule was operative and the Claim must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of August 1990.