

The Third Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Spokane International Railroad Company

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

(1) The Carrier violated the Agreement when it assigned outside forces (Sletten Construction Company) to construct Bridges 109.8 and 109.9 at Bonners Ferry, Idaho beginning March 11, 1985 (System File S-I-119C/013-210-SI-1).

(2) The Carrier also violated the Agreement when it assigned outside forces to perform earth and rock moving work in connection with building a new roadway at Bridge 109.9 beginning April 9, 1985 (System File S-I-120C/013-210-SI-1).

(3) As a consequence of the violation referred to in Part (1) above, Foreman G. H. Barfuss, Machine Operator J. D. Yeumans, Sr., Welder P. W. Curless, First Class Steel Mechanics A. E. Poelstra and W. E. Kendall shall each be allowed pay at their respective rates for:

'... 8 hours Straight time and 2 hours Time and One-half for every day worked by the Contractor, Sletten Construction Company, starting on March 11, 1985 until April 12, 1985 and then on April 15, 1985 for 8 Hours Straight Time and 8 Hours Time and One-half until this violation is corrected ***'

and Foreman N. R. Brown, Machine Operator H. E. Hedgecock, Welder K. T. Gors, First Class Steel Mechanics D. R. Greisen and M. R. Brown shall each be allowed pay at their respective rates for:

'*** 8 Hours Straight Time and 2 hours Time and One-half for each day worked by the Contractor when the Second Crew from the Contractor started work on April 15, 1985....'

(4) As a consequence of the violation referred to in Part (2) above, furloughed Sectionmen T. S. Couch, G. Chopin and G. Werner shall each be allowed pay at their respective rates for:

'... 8 hours straight time plus time and one-half for each day worked by the Contractor starting on April 29, 1985 until this violation is corrected or the work completed....'

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.

On January 25, 1985, the Carrier, by written notice, advised the Organization of its intent to solicit bids covering the construction of Bridges 109.8 and 109.9 at Bonners Ferry, Idaho. The new bridge would replace a wooden structure. The Carrier's notice stated in pertinent part that:

"The project will require underwater construction, barges and over-water cranes, and we neither have the skills nor the equipment to handle the work."

On February 1, 1985, the Organization advised the Carrier the Organization was not agreeable to contracting out any of the work. Thereafter, the parties met in conference on February 8, 1985, as well as March 28, 1985. On May 2, 1985, the Organization filed two Claims contending the work contracted out was covered by the parties' Agreement. Citing Rules 2 (Seniority Groups and Classes), 53 (Classification of Work), and 54 (Classification of Employees), the Organization argues the work of constructing bridges and constructing roadbed approaches for new tracks is work encompassed within the scope of the Agreement. For its part, the Carrier argues it did not have the equipment, supervisory skills, or the manpower to construct the bridge at Bonners Ferry given the fact the bridge was 803 feet long. The Carrier also asserted it was not required to piecemeal portions of the overall project.

In this matter, the Organization adopts the position the parties' Scope Rule prohibits the Carrier from contracting out any work. In so arguing, the Organization also insists the provisions of Article IV, Contracting Out, of the 1968 National Agreement are not controlling because the "more restrictive provisions" of Rule 1 were retained in the parties' Agreement. The Organization additionally attempts to suppress any reference to the 1968 National Agreement because the Carrier did not specifically state its notice was in compliance with Article IV of the National Agreement.

These arguments overlook significant facts contained in this record. First, the parties' Agreement contains no language requiring the Carrier to give notice to the Organization when work that is actually or arguably considered within the scope of the Agreement is planned to be contracted out.

Secondly, the Carrier asserted as early as November 27, 1985, that its employees had never previously performed work similar to the Bonners Ferry project. This was not rebutted by the Organization. Also, on November 27, 1985, the Carrier specified the bridge was 803 feet long; that two large barge cranes were necessary for the construction of nine piers in the river; and that this included cofferdams in water ten to twenty feet deep with spans weighing between 120,000 pounds and 185,000 pounds. In addition, the Carrier consistently stated it did not possess the supervisory skills to direct the construction of the bridge. Aside from mere assertions claiming the employees did possess the necessary skills, the Organization presented no evidence to support that Claim. The record further discloses the Carrier recalled three furloughed carpenters, as well as a furloughed sectionman.

The Organization refers to a letter agreement entered into on December 11, 1981, between the Organization and the National Railway Labor Conference Committee. This Agreement refers specifically to the contracting out provisions of the 1968 National Agreement and jointly reaffirmed the "intent of Article IV of the May 17, 1968, Agreement that advance notice requirements be strictly adhered to...." Herein, this is precisely what the Carrier did on January 25, 1985, obviously in compliance with Article IV of the 1968 National Agreement. In the absence of any language in the parties' local agreement requiring such notice, the Organization's contention that the Carrier's failure to specifically cite Article IV nullifies its efficacy is an exercise in sophistry.

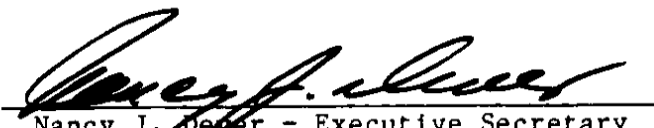
In summation, the Carrier provided the Organization with the requisite notice required by Article IV of the National Agreement. The Carrier's contention that Organization employees had never previously performed work as contemplated in the Bonners Ferry project was not refuted nor was the Carrier's contention that its supervisors and employees lacked the necessary skills to perform the work. This view is supported by the sheer magnitude and complexity of the project. Finally, this Board finds no factual support for the Organization's claim it could perform all the work involved or that some of the work might have been reserved from the project and assigned to the Claimants. See Third Division Awards 26504, 24281, 23102, and 20899. Accordingly, we will deny this Claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Deper - Executive Secretary

Dated at Chicago, Illinois, this 27th day of September 1990.