

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
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(Terminal Railroad Association of St. Louis

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

(1) The Carrier violated the Agreement when it assigned outside forces to perform welding work on the Eads Bridge on May 12, 13 and 14, 1986 (System File 1986-9 T.R.R.A./013-293-14).

(2) As a consequence of the aforesaid violation, Bridge and Building Mechanic Welders K. Case and E. Harper shall each be allowed twenty-four (24) 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 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 April 1, 1986, the Carrier notified the Organization of its intent to retain an outside contractor to resurface the main span and the east end approaches to Eads Bridge. At an April 14, 1986 conference, the Organization's General Chairman objected to the Carrier's decision to contract out plate welding work as part of the paving project. On the three Claim dates, employees of either the paving contractor or a subcontractor welded plates on the bridge deck to patch holes and cracks.

On the property, the Carrier's two main reasons for contracting out the welding work were that patching holes was integrated with the paving project and the Carrier was experiencing a continuing shortage of bridge and building (B&B) mechanics. The Carrier intimated that if B&B mechanics had performed the disputed work, it would have had to interrupt ongoing scheduled bridge maintenance projects.

The Organization accused the Carrier of acting in bad faith because it failed to reduce the amount of work it was contracting out in accord with the December 11, 1981 Letter Agreement. The Organization also asserted that B&B mechanics (qualified welders) have performed this type of welding function in the past.

At the onset, this Board notes that, in its submission to this Board, the Carrier, for the first time, contended that the disputed work was not within the purview of the scope clause of the applicable Agreement. Inasmuch as this argument was not raised on the property, the Board validates the Organization's unrefuted allegation, properly raised on the property, that the Carrier farmed out work reserved to covered employees by the Scope Rule.

Although we find that the Carrier acted in good faith and it fully complied with Article 4 of the 1968 National Agreement, the plate welding task was preparatory work which could have been easily segregated from the paving project. At a heavy construction site, it is not unusual to have workers from different crafts performing different work. Third Division Award 19578. Assigning qualified bridge and building employees to perform the welding work would not have impeded completion of the entire resurfacing project. Indeed, the description of the work given by both parties lends support to the Organization's position that the preparatory work could have been accomplished at almost any time prior to the actual paving. Thus, the welding was distinct from the resurfacing work.

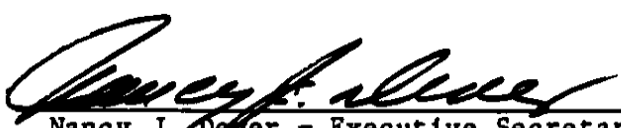
Finally, the Carrier demonstrated that there was a shortage of manpower in the bridge and building subdepartment. From the record before us, the Board is unable to ascertain if the Carrier was experiencing a labor shortfall or an extraordinary heavy workload or both. In any event, the manpower shortage was prolonged and persistent, which, unlike a sudden, unexpected shortfall of employees, is not a recognized reason for contracting out work belonging to the craft and class of bridge and building mechanics.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 24th day of September 1991.