

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 29981
Docket No. MW-28843
93-3-89-3-241

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Union Pacific Railroad Company (former
(Missouri Pacific 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 to perform concrete bridge construction work at Bridge 87.6 on the Fort Worth Subdivision at Mumford, Texas beginning November 30, 1987 (Carrier's File 880118 MPR).
- (2) The Agreement was further violated when the Carrier failed to provide the General Chairman with advance written notification of its intention to contract said work as required by Article IV of the May 17, 1968 National Agreement.
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, the Claimants listed below* shall each be allowed pay at their appropriate straight time and overtime rates for an equal proportionate share of the man-hours consumed by the contractor's employees performing the work identified in Part (1) above beginning November 30, 1987 and continuing until the violation is corrected.

*CLAIMANTS

R. E. Robertson	W. L. Birdow, Jr.
P. L. Quinn	G. L. Cook
C. F. Ward	K. B. Pace
T. E. Wilson	R. L. Sanders
F. O. Blalock	H. H. Armstrong
J. L. Pettiet	J. Jackson, Jr.
C. S. Baldwin, Jr.	D. L. Gallien
E. L. Tyler	S. L. Tolar
W. K. Griffiths	L. Griffen, III
R. J. Allemand	R. A. Anderson
H. S. Wicke	J. R. Collins
M. L. Durant	D. A. Bradley"

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 employes involved in this dispute are respectively carrier and employe 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 28, 1988, the Organization filed a Claim alleging that the Carrier violated the Agreement when it hired an outside contractor to perform bridge construction work that has been historically performed by the Carrier's B&B employees. The Organization contended that the Carrier could acquire the specialized equipment necessary to perform the work and thereby use the Claimants and not deprive them of the work that was customarily assigned to their department.

The Carrier denied the claim alleging that it was customary for the Carrier to use outside contractors to perform bridge work.

After several discussions, the Organization argued that the Carrier did not properly serve notice of its intention to use an outside contractor. In its notice, the Organization alleges, the Carrier identified the work to be performed at Mile Post 87.57, not Mile Post 85.56 where it was actually performed. Therefore, "this [claim] rendered the [Carrier's] notice invalid".

The Carrier argues that it served the Organization proper notice and has a right to use outside contractors.

This Board has reviewed the extensive record in this case and we find that the Organization has failed to meet its burden of proof that the Carrier violated the Agreement when it subcontracted the work involved in this case. Therefore, the claim must be denied.

The record reveals that on July 3, 1987, the Carrier issued a one-page written notice to the General Chairman indicating that the Carrier planned to replace a 34 span timber pile trestle ballast deck approach and perform other work on Bridge 87.57 near Bryan, Texas. The Carrier informed the Organization that the work involved "has customarily and traditionally been performed by

outside contractor's forces." The Carrier also stated that it "has neither the skilled manpower nor the proper equipment to safely and competently undertake and complete this project in a timely manner."

On July 30, 1987, the Organization responded in writing to the notice. The Organization states that it objected to the subcontracting "in conference on July 16, 1987." Therefore, it is clear that the Organization received notice, it was conferenced, and the Organization had an opportunity to respond to the Carrier's position. This Board has no choice but to deny the Organization's position with respect to the lack of notice.

With respect to the Carrier's right to contract out the bridge work, this Board must find that the Organization has not presented sufficient evidence to meet its burden of proof that the Carrier was in violation of the Agreement when it took that action. In Third Division Award 28654, this Board found that even though the type of work in question might be within the capabilities of the Claimants, if the Carrier presents sufficient evidence that it has contracted out the type of work in the past without objection from the Organization, the Carrier has a right to subcontract the work. The Carrier provided ample evidence of its previous contracting of similar work.

For all the reasons set forth above, the Claim must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 17th day of December 1993.