

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 29994
Docket No. MW-29956
94-3-91-3-343

The Third Division consisted of the regular members and in addition Referee Hugh G. Duffy when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Soo Line Railroad Company (former Chicago,
(Milwaukee, St. Paul and Pacific Railroad
(Company)

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

- (1) The Agreement was violated when the Carrier assigned Division B&B Crew #47H to perform pile driving work at Bridge K-164 in the vicinity of Dubuque, Iowa on January 31 and February 1, 2 and 3, 1990 instead of Assigning System B&B Crew #47Z (System File C #16-90/800-46-B-360 CMP).
- (2) As a consequence of the violation referred to in Part (1) above, System B&B Crew #47Z employees F. J. Betts, J. K. Middleton, J. E. Gallagher, E. E. Cooksley and B. A. Ingles shall each be compensated:

'...for all time and overtime wages lost as a result of the Carrier's failure to utilize the aforementioned employees for pile driving work in accordance with the Memorandum of Agreement dated December 9, 1989.
***'"

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 employee 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 30, 1990, Bridge K-146 was damaged in a derailment in the vicinity of Dubuque, Iowa, blocking the Carrier's main line. The Carrier utilized System Bridge Crew 47X and Division B&B Crew 47H to make emergency repairs, which included pile driving by Division B&B Crew 47H.

The Organization contends that individuals from System B&B Crew 47Z (System Concrete Crew), all of whom were performing duties at other locations during the time of the events in question, should have been utilized to perform the pile driving in accordance with a Memorandum of Agreement dated December 9, 1989. The Carrier contends that B&B Crew 47H was already on the scene, and that the pile driving work performed was consistent with the work the crew had done in the past on an as needed basis.

The Memorandum of Agreement reads in pertinent part as follows:

"In recognition of the operational need to reduce the System Steel Crew and the System Pile Driving Crew and combine the remaining force, the following understanding has been reached:

'The combined crew will consist of steel erectors and carpenters in consideration of work equity and the needs of the Carrier's operation. It is not the intent to utilize carpenters within the combined crew to perform steel erectors functions for which they do not possess the necessary seniority and skill level. It is agreed that the Carrier will augment this combined crew with necessary individuals from the System Concrete Crew when performing pile driving.'"

Section 8(c) of the Agreement allows the Carrier to perform emergency service without regard to seniority. While the Memorandum of Agreement clearly covers regularly scheduled pile driving work performed by System Bridge Crew 47X, it does not reserve exclusive system wide rights to all pile driving work on

the property to that Crew. Since Division B&B Crew 47H was already working at the derailment site, and did the required pile driving work, and given that the Organization failed to rebut the Carrier's material assertion on the property that the Crew regularly performed pile driving on an as needed basis, we conclude that the Organization has failed to carry its burden of proof that the Carrier violated the Agreement.

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 21st day of January 1994.