

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 31502  
Docket No. MW-31747  
96-3-94-3-29

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes  
(  
(Elgin, Joliet and Eastern Railway Company

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

- (1) The Agreement was violated when the Carrier assigned Car Department forces to perform Bridge and Building Subdepartment work, i.e., made structural repairs to the Carrier's bridge over Industrial Boulevard, beginning August 3, 1992 and continuing, instead of assigning B&B Subdepartment forces to perform such work (System File SAC-11-92/UM-12-92).
- (2) As a consequence of the violation referred to in Part (1) above, Claimants A. Pace, R. Olivencia, G. Pluta, A. Pluta, J. Guzman and J. Budzevski shall be compensated, at their respective time and one-half rates of pay, for an equal proportionate share of the total number of man-hours expended by the Car Department forces in the performance of the Bridge and Building Subdepartment work."

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 May 14, 1992 a truck pulling a trailer loaded with a backhoe struck the under-structure of the Carrier's Bridge No. 741. The Carrier did not learn of this damage until June. On July 10,

1992, the Carrier notified the Organization that it was going to contract out the repair of the damage. Instead of using an outside contractor the Carrier utilized Car Department employees to make the repairs beginning August 3, 1992. As a result this claim was filed.

The facts are not in dispute. The Carrier admits Car Department employees worked a total of 168 hours on the project, of this total, 24 hours consisted of work done in the Car Shop, which the Organization is not claiming. Clearly the work of repairing bridges is not covered by the Carmen's Classification of Work Rule.

The Carrier argues that the Claimants suffered no wage loss as a result of its actions, because the Claimants were fully employed.

The Organization states a pecuniary Award is proper. Both parties have cited Awards to support its position.

While the Claimants did not suffer a wage loss, they did lose work opportunities. The Carmen involved suspended their regular work as Car Department employees to do the work on the Bridge. The Carrier has not shown why the Claimants could not have suspended the work they were doing to perform the work.

The Board finds the Agreement has been violated and orders that Claimants be compensated 144 hours divided equally. However, the claim for time and one half is not proper and the award will be at the straight time rate.

#### AWARD

Claim sustained in accordance with the Findings.

#### ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Dated at Chicago, Illinois, this 23rd day of May 1996.