

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32274
Docket No. MW-31623
97-3-93-3-636**

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

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Burlington Northern Railroad Company**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned an outside contractor (Sam Construction) to perform Roadway Equipment Subdepartment work of operating one (1) crane, one (1) D-8 Caterpillar and six (6) dirt scrapers to remove a bridge located at Mile Post 241.29 and replace it with a grade crossing near Alma, Nebraska beginning May 26 through May 29, 1992 (System File C-92-C100-40/MWA 92-11-11B).**
- (2) The Agreement was violated when the Carrier assigned seven (7) employees of an outside contractor (Sam Construction) to perform Bridge and Building Subdepartment work of removing a bridge located at Mile Post 241.29 and replace it with a grade crossing near Alma, Nebraska on May 26, 1992 (System File C-92-C100-39/MWA 92-11-9A).**
- (3) The Agreement was further violated when the Carrier failed to give the General Chairman advance written notice of its plans to contract out any of the above-described work, as stipulated in the Note to Rule 55.**
- (4) As a consequence of the violations referred to in Parts (1) and/or (3) above, one (1) senior unassigned Group 1 Machine Operator and seven (7) senior unassigned Group 2 Machine Operators shall each**

be allowed eight (8) hours' pay at their respective straight time rates for each day beginning May 26 through 29, 1992.

- (5) As a consequence of the violations referred to in parts (2) and/or (3) above, Bridge and Building Subdepartment employees J. D. Pfeiffer, C. L. Powers, R. D. Karash, D. L. Linner, K. L. Lytle, J. J. Cruz and J. C. Dawson shall each be allowed eight (8) hours' pay at their respective straight time rates for May 26, 1992."

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 were given due notice of hearing thereon.

This claim arose when the Organization took exception to the Carrier's assignment of an outside contractor to remove a bridge at Mile Post 241.29 on May 26, 1992, and the assignment of an outside contractor to perform dirt work beginning May 26 through May 29, 1992 at Mile Post 241.29 near Alma, Nebraska. The Organization argues that the work involved here has been customarily and historically performed by the Carrier's employees who hold seniority in Groups 1 and 2 of the Roadway Equipment Subdepartment. The Organization contends that the Claimants were willing and able to perform the work in question. Furthermore, the Organization argues that the Carrier did not notify the General Chairman of its intent to hire an outside contractor pursuant to the Note to Rule 55.

The Carrier denied the claim contending that it had nothing to do with the work in question. The removal of the bridge and its replacement with a grade crossing at Mile Post 241.29 were under the sole control of the State of Nebraska. The Carrier argues

that it was the State of Nebraska that initiated the work in question, not the Carrier. Therefore, the Carrier contends it was under no obligation to notify the Organization of work that it had no control over in the first place.

The parties being unable to resolve the issues at hand, this matter came before this Board.

This Board has reviewed the record in this case and we find that the Organization has not met its burden of proof that the Carrier's action in this case violated the Agreement.

The record reveals that the Carrier did not have any control over the work that was performed. In this case, the State of Nebraska contracted with the outside contractor for the benefit of the State of Nebraska. Moreover, there has been no showing that the Carrier possessed the proper equipment or the properly trained personnel to perform the work at issue.

Since the Organization has not provided sufficient evidence that this work was other than under the control of the State of Nebraska, we find that there was no need for the Carrier to issue a notice and hold a conference to discuss the alleged subcontracting work. The Carrier is not required to provide notice and meet with the Organization over work which the Carrier does not order, seek, request, or perform.

Since the Organization has not supplied sufficient evidence to support its claim, the claim must be denied.

AWARD

Claim denied.

Form 1
Page 4

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Docket No. MW-31623
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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 7th day of October 1997.