

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32434
Docket No. MW-31122
98-3-93-3-64**

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

**(Brotherhood of Maintenance of Way Employes
PARTIES TO DISPUTE: (
(Southern Pacific Transportation Company
((Eastern Lines)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned outside forces (H. B. Zachry) to perform Welding Subdepartment work (cut, grind and weld H-beams and work related thereto) on the Trinity River Bridge at Liberty, Texas at Mile Post 321.98 beginning January 12 through February 1, 1992 (System File MW-92-46/MofW 92-7 SPE).**
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with advance written notice of its intention to contract out said work as required by Article 36.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, the Claimants* listed below shall each be allowed an equal proportionate share of the total number of man-hours, both regular straight time and overtime, expended by the outside forces performing the work set forth in Part (1) hereof.**

*** WELDERS**

**D. Jimenez
J. Garcia
T. L. Pate**

**T. R. Dugas
A. D. Anderson
A. Broussard**

C. L. Schumacher
C. R. Hunter
M. J. Batiste
L. A. Swientek, Jr.
V. S. Sanchez
A. F. Granger, II
L. M. Stewart
J. A. Cloud
C. J. Abshire
K. A. Albert
J. P. Fox
C. Matthews, Jr.
M. L. Stakes
M. E. Middleton

A. J. Kortz
M. R. Kalinowski
J. Gonzales
J. O. Wooley
C. R. Smith
J. W. Baggett
N. G. Barrera
H. T. Lewis
J. R. Laza
R. H. Andrews
J. S. Wisdom
R. E. Fritz
F. J. Sanchez
D. B. Richardson

WELDER HELPERS

R. L. Patterson
J. Allen
G. A. Davis
A. W. Parker
R. J. Minix
C. Hernandez
R. B. Watts
D. G. Galindo

P. J. Morvant
E. L. Landry
C. E. Dennis
R. J. Johnston
E. H. Anderson
H. Owdley
G. Shello"

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.

The following basic facts are not in dispute. On January 1, 1992, the Trinity River Bridge ("The Bridge") at Mile Post 321.98 in Liberty, Texas was removed from service due to a structural failure of the center span.

On January 7, 1992, Carrier's Manager-Labor Relations apprised the General Chairman of the following:

"Please accept this as Carrier's notification No. 1, pursuant to Article 36 of the current agreement, of our intent to contract out the repairs on the Trinity River Bridge at Liberty, Texas.

These repairs are necessary because of the loss of the center pier of the turn span section of the bridge as a result of the flooding conditions that exist in Texas. The work involved will require extensive steel erection. Our bridge and building forces will assist the contractor with the repairs.

Due to the emergency that existed, it is impossible to give the fifteen (15) days' notice as required under the provisions of Article 36 of the current agreement."

The above-quoted notification was postmarked January 9, 1992; and received by the General Chairman on January 15, 1992. In the meantime, on January 14, 1992, the Special Projects Manager for the H. B. Zachry Company, General Contractors, (hereinafter referred to as "Zachry") sent Carrier the following letter:

"This letter acknowledges receipt of your Emergency Contract, dated January 10, 1992, as a response to the H. B. Zachry offer, dated January 10, 1992. Enclosed is an executed copy.

We will be pleased to perform the services subject to the Terms and Conditions specified in said Zachry Company offer."

The Organization presented a claim on behalf of the above listed employees account Carrier allegedly violated the following, but not limited to, Articles of the Agreement: Article 1 - Scope Article 2 - Seniority Rules, Article 3 - Force Reductions,

Article 6 - Seniority Rosters, Article 8 - Promotions and Filling of Vacancies, Article 16 - General Rules and Article 18 - Welding Gangs and Units. According to the Organization, Carrier's alleged violation "caused the Claimants a loss of wages and work opportunity"; the work which Zachry performed has been historically performed by the Maintenance of Way employees; and, Claimants were not "allowed" or "offered" the work. The General Chairman further alleged that the work was not "emergency work", and that Carrier's notice was not timely. The Organization seeks an equal number of both straight time and overtime hours for the work which Zachry employees performed.

Carrier denied the claim, premised upon the following:

"Investigation reveals this was emergency work. The bridge was out of service until welding repairs could be made. The Carrier diverted trains over another railroad but were incurring significant delays to trains, as well as the added expense, until traffic could be restored to our main line.

Emergency work of this nature and scope has always been done by contractors since State certified structural welders are required to perform this type of work. The contractor was able to provide this level of qualification; the Brotherhood cannot.

As to the allegation the Carrier violated Article 36 of the current Agreement, Contracting Out, by not giving the General Chairman, BMWE, proper notice of the contracting out of work, you are advised Carrier only had time to get engineering designs and a rough plan with rate schedules from the contractors. The work was performed on an emergency contract prepared in San Francisco. No plans or specifications were prepared in sufficient detail to solicit firm bids. All work was done on a time and materials basis, using rates from the contractors schedule, and supervised continuously by the Railroad and by our consulting engineer."

The situation presented on this record was an "emergency" under any reasonable interpretation of that word. Due to heavy rains and flooding, the masonry center pier for a 225 foot steel truss on the turn span section of the Trinity River Bridge, near Liberty, Texas, collapsed. As a consequence, Carrier was required to take the bridge

out of service and reroute its traffic over Union Pacific and Santa Fe tracks, for each day of which substantial trackage fees were charged. Carrier utilized its Maintenance of Way forces in some aspects of the repair work but subcontracted to Zachry the work of cutting, grinding and welding H-beams to expedite reconstruction of the pier and bridge truss.

In Third Division Award 26677 between these same Parties, the Third Division pointed out that Carrier must be accorded reasonable leeway in coping with bona fide emergency repairs, including relaxation of the 15-day notification requirement of Rule 36. (Citing Third Division Awards "13316, 12777, 15597 and many similar holdings.") That decision constitutes ample precedent for a denial decision in this particular case.

AWARD

Claim denied.

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 21st day of January 1998.