

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32557
Docket No. MW-31718
98-3-93-3-770

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Terminal Railroad Association of St. Louis

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it assigned outside forces (Osmose) to perform Maintenance of Way and Structures Department work (concrete repairs) to the MacArthur Bridge, Cahokia Creek Bridge and the C&A Bridge beginning September 14, 1992 and continuing (System File 1992-15/013-293-14).
- (2) The Agreement was further violated when the Carrier failed to notify the General Chairman of the reasons for disallowing the instant claim* within sixty (60) calendar days of the date it was filed.
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, furloughed B&B employes A. D. Ramirez, J. C. King and regularly assigned B&B employes L. V. Gann, J. K. Roberds, A. J. Cracchiolo, W. Vickers, C. Carrico, C. Lovett, N. Libell, A. Smoot, J. Headrick, R. Pruitt, S. Mallard and S. Wolf shall each be allowed pay at their respective straight time and overtime rates of pay for an equal proportionate share of the total number of straight time and overtime man-hours expended by the outside forces in the performance of the subject repair work beginning September 14, 1992 and continuing until the contractor has left the property, and all furloughed Claimants shall be immediately recalled to service.

The initial letter of claim will be reproduced within our initial submission.

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.

As a procedural matter, the Organization argues the claim must be sustained owing to the Carrier's alleged failure to respond to the claim within the required time limits. Because the record shows uncertainty as to the facts concerning this allegation, the Board concludes there is no substantial basis to find the claim should not be heard on its merits.

By letter dated August 14, 1992, the Carrier notified the General Chairman of its intention to contract "concrete rehabilitation work" on four bridges. The Carrier stated it "does not have the specialized equipment nor personnel with the technical knowledge or expertise to perform the work."

The General Chairman requested a conference on the matter. Such conference was held, and on September 11, 1992, the Carrier advised the General Chairman that it would proceed with having the work performed by a contractor.

This is one of four claims raised by the Organization in 1990-92 which concerned similar bridge repair work. Each claim was progressed to the Board for review. Third Division Award 29938 concerned 1990 bridge work. In that matter, the proposed

contracting was properly discussed with the General Chairman and, failing agreement, the Carrier proceeded with the project. Award 29938 stated in pertinent part as follows:

“[W]e find the Carrier’s use of a contractor to perform this work was justified and not in violation of either the letter or the spirit of the above commitment [Article IV of the May 17, 1968 National Agreement]. It is evident the Carrier lacked both the equipment and personnel to perform the work it had contracted out. There is no indication the Carrier failed to act in good faith.”

Third Division Award 31756 sustained the claim concerning 1991 contracting of bridge repairs on four bridges, based on the Carrier’s failure to meet its Article IV notification requirement as to all except one of the bridges involved. While Award 31756 discussed the parties’ arguments as to the nature of the work itself, the Award included no findings as to the merits of these arguments.

Third Division Award 31346 concerned another 1991 bridge contracting dispute. In sustaining the claim, the Award emphasized (1) the Carrier placed all employees except one on furlough prior to commencement of the contracted work; (2) the conference was not held with the Organization until after the Carrier had contracted with outside forces; and (3) the Carrier failed to prove its contention of the need for “emergency” repairs. Award 31346 stated, however:

“[T]he Organization has presented no evidence to contradict Carrier’s statement that it did not have the equipment to perform the work at issue.”

In the matter here under review, there is no question that the Organization was notified in timely fashion and that a conference was held to discuss the work. In correspondence concerning the work, the General Chairman contended, “there is no reason that [Carrier] Mechanics cannot perform” seven of the 12 listed portions of the project. This supports the Carrier’s view that at minimum it was necessary to contract the other portions of the work. On this basis, the Board concludes there is support for the Carrier’s position as to the impracticality of dividing the work between its forces and the contractor’s forces for this three-month project.

Careful review shows that the Board's conclusion here is not in disharmony with the findings of the three other similar Awards, discussed above, involving the same parties.

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 29th day of April 1998.