

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32603
Docket No. MW-31777
98-3-94-3-50

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: (
(Burlington Northern Railroad Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it assigned outside forces (Osmose Company, Inc.) to perform ordinary concrete repair work (wingwall repair work) on Bridge No. 112.5 on the Lakes Division on July 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25 and 26, 1991 (System File T-M-810-B/3MWB 91-10-31C).
- (2) As a consequence of the violation referred to in Part (1) above, Foreman B. L. Frisk, First Class Carpenters D. C. Steen, D. P. Hawley and Truck Driver K. A. Paulson shall each be allowed compensation at their appropriate rates of pay for an equal proportionate share of the total number of man-hours [six hundred (600) straight time and two hundred (200) overtime hours] consumed by the outside forces performing the above-mentioned work beginning on July 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25 and 26, 1991.”

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.

Under date of May 2, 1991, the Carrier sent notice to the Organization, in pertinent part as follows:

"As information, it is tentatively proposed to repair certain bridges located on the Carrier's Lake Division by the epoxy injection method.

The locations of the structures are as follows:

[Eight bridges listed, including:]
Bridge 112.5 Loerch, Minnesota

The Carrier is not equipped, nor do its employees possess the necessary expertise to perform all phases of this work which utilizes special equipment and material available through the contractor. Therefore, as in the past, it is proposed that this work will be performed by contract."

Although the notice was challenged by the Organization as to form, the Board finds it in Rule compliance. During the claim handling procedure, the Organization contended that "epoxy injection" work had not been performed; the record demonstrates otherwise.

The matter of epoxy injection and the lack of feasibility of "piecemealing" other related work have been reviewed many times in Awards involving the two parties in dispute here. Examples of these Awards are Public Law Board No. 4768, Award 29 ("Carrier established information that for more than ten years the Osmose firm has been employed . . . 'to perform the internal structural cement bridge repair using advanced epoxy methods and technology'" and Public Law Board No. 4768, Award 10

(“insufficient support . . . for a finding that the epoxy repair work could have been assigned efficiently on a piecemeal basis”).

The Board finds no basis to reach a different conclusion on the facts presented in this dispute.

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 22nd day of May 1998.