

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36827
Docket No. MW-35312
04-3-99-3-160

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(CSX Transportation, Inc. [former Louisville and
(Nashville Railroad Company (former Monon Railroad))

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it assigned outside forces to perform Maintenance of Way work (minor steel repairs and installation of steel bridge spans and a new timber deck) at Bridge Q124.2 on the Monon Seniority District, Chicago Service Lane in the vicinity of Lafayette, Indiana beginning November 29, 1997 through February 3, 1998 [System File 98231.MB/12 (98-870) MNN].**
- (2) The Agreement was further violated when the Carrier failed to make a good faith effort to reduce the incidence of contracting out scope covered work and increase the use of its Maintenance of Way forces as required by Rule 60 and the December 11, 1981 Letter of Understanding.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Bridge Subdepartment Foreman R. E. White, Truck Driver/Carpenter L. L. Phillips, Carpenters J. Miller and W. J. Tyson shall each be compensated for three hundred forty (340) hours at their respective rates of pay and one hundred forty-three and one-half (143.5) hours at their respective time and one-half rates of pay.”**

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.

By notice dated October 30, 1997, the Carrier advised the Organization that it intended to contract out the replacement of two steel spans, plus minor steel repairs to the third span and the installation of a new timber deck on Bridge 124.2 at Lafayette, Indiana, on the Monon Subdivision. Further, according to the notice, the "Carrier has no alternative to contracting this work due to the fact that we do not have adequate equipment laid up (i.e., large crane, boom truck, backhoe) . . . with which the work may be done."

Conference was held, without resolution. The Carrier then contracted out the work.

The Organization asserted on the property that "[t]here is a 50 ton locomotive crane that is parked at Mitchell, Indiana . . . [which] is more than big enough to do the job." The Organization further pointed out that a boom truck and backhoe were also available for the job.

The Carrier responded:

" . . . Carrier does not have available the necessary equipment provided by the contractor. Yes, Carrier owns a 50-ton crane that is currently idle. However, the contractor provides an 80-ton crane that is necessary for the safe and efficient accomplishment of the

project. The contractor also provides a rail-mounted graddall, a rail-mounted rotary dump truck, and a bob cat - none of which are possessed or available to the Carrier."

This record is in conflict over what equipment was actually necessary to perform the work; whether the Carrier had the equipment and whether the equipment was available to the Carrier from outside sources. The Organization contends that the Carrier had sufficient equipment to perform the work. The Carrier states that it did not (i.e., it needed a larger crane than it possessed and it did not have certain other equipment at all); the necessary equipment was not available to it; and the contractor had the equipment to perform the work. Without more from the Organization showing that the necessary equipment was available to the Carrier (either in its adequacy to perform the work; in its possession; or whether it could be obtained from outside rental sources) we are unable to resolve the conflict concerning the equipment in the Organization's favor. The claim shall therefore be denied.

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 28th day of January 2004.