Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 40374
Docket No. MW-38618
10-3-NRAB-00003-040631
(04-3-631)

The Third Division consisted of the regular members and in addition Referee Steven M. Bierig when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes Division - IBT Rail Conference
(
(Union Pacific Railroad Company (former Chicago and North Western Transportation Company)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier assigned outside forces (Champion Crane Inc.) to perform Maintenance of Way and Structures Department work (operate rented crawler crane) to remove bridge spans at Mile Post 252.65 on the Boone Subdivision in the vicinity of Denison, Iowa beginning on September 1, 2003 and continuing through September 30, 2003, instead of Machine Operator C. Anderson (System File 4RM-9490T/1383317 CNW).

(2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with proper advance written notice of its intent to contract out the above-referenced work or make a good-faith attempt to reach an understanding concerning such contracting as required by Rule 1 and the December 11, 1981 Letter of Understanding.

(3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimant C. Anderson shall now be compensated for

one hundred eighty (180) hours' pay at the applicable straight time rate 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.

Claimant C. Anderson established and holds seniority on District T-7 dating from June 16, 1977 with Common Machine Operator seniority dating from September 25, 1978 and System Machine Operator seniority dating from April 9, 1983. He was assigned and working as a Common Machine Operator a System B&B Gang on the dates involved in this dispute.

Beginning on or about September 1 and continuing through September 30, 2003, the Carrier assigned outside forces (Champion Crane, Inc.) to perform Machine Operator work on the Boone Subdivision near Denison, Iowa. The contractor rented a Manitowoc 888 Crawler Crane from Essex Crane Rental Corporation and assigned one employee who worked ten hours per day for 18 days during the month of September, along with a B&B System Gang which was removing bridge spans at Mile Post 252.65 following the installation of a culvert at that location.

The Organization contends that the Agreement was violated when Champion Crane utilized a crawler crane to remove bridge spans at Mile Post 252.65 on the Boone Subdivision in the vicinity of Denison, Iowa, beginning on September 1 and

continuing through September 30, 2003. First, it claims that the Carrier did not provide proper notice to the General Chairman and thus did not act in good faith. The Organization asserts that the notice was sent only as a formality after the Carrier had determined that it would contract out the work. Second, the Organization claims that it was improper for the Carrier to contract out the above-mentioned work, which is work that is properly reserved to Maintenance of Way and Structures Department personnel.

According to the Organization, the Carrier had customarily assigned work of this nature to BMWE-represented employees. It further claims that the relevant work is consistent with the Scope Rule and the Carrier's employees were fully qualified and capable of performing the designated work. The work performed by Champion Crane is within the jurisdiction of the Organization and, therefore, the Claimants should have performed said work. Because the Claimants were denied the right to perform the work, the Organization argues that they should be compensated for the lost work opportunity.

Conversely, the Carrier takes the position that the Organization cannot meet its burden of proof in this matter. The Carrier contends that the work that was contracted out required the use of cranes of a size it does not own and that its employees cannot properly operate. Under the language of the Agreement, the Carrier had the right to use outside forces in such a case and such work does not belong to BMWE-represented employees under either the express language of the Scope Rule or any binding past practice. According to the Carrier, controlling precedent has upheld the Carrier's position. Further, as concerns the alleged notice violation, the Carrier contends that it did provide proper advance notice to the Organization.

First, we find that the Carrier did give proper notice to the Organization of the proposed contracting. In a similar case, the Board held that the solicitation of bids to an outside contractor does not preclude the Carrier from ultimately choosing to have work performed by its own employees. The Carrier could solicit bids, while still considering whether to assign the work to its own employees. See Public Law Board No. 7098, Award 10. In the instant case, we find that the notice was sufficient and was not issued in bad faith.

We carefully reviewed all evidence regarding whether the Organization proved that the involved work belongs to BMWE-represented forces. The Organization was unable to disprove the Carrier's evidence that the rented crawler crane was different from the Carrier's equipment and could perform the work in a more efficient and timely manner. It is within the Carrier's province to make decisions concerning the efficiency of the operation, provided that it does not violate specific rights set forth in the Agreement. Based on the record before the Board, the Carrier's use of the crawler crane and contracted operator did not violate the Agreement. The Agreement specifically permits the Carrier to contract out work customarily performed by its own employees when specialized equipment not owned by Carrier is required.

Based on the record evidence, as well as the above-cited precedent, we cannot find that the use of the contracted crane crawler violated the Agreement. The burden was on the Organization to prove that a violation occurred. It failed to satisfy its burden of proof. The Board concludes that the notice was proper and that it was appropriate for the Carrier to contract out the crawler crane work. Accordingly, the instant claim must 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 25th day of March 2010.