

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40815
Docket No. MW-40763
10-3-NRAB-00003-090017**

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

**(Brotherhood of Maintenance of Way Employes Division -
(IBT Rail Conference
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned outside forces (Flat Iron Construction) to perform Maintenance of Way and Structures Department work (build a bridge) between Mile Posts 50.0 and 51.0 on the North Fork Subdivision in the vicinity of Delta, Colorado beginning on October 9 and continuing through November 22, 2006 (System File D-06-32C/1465362).**
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with an advance notice of its intent to contract the aforesaid work or 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 52 and the December 11, 1981 Letter of Understanding.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants E. Johns, J. Robertson, W. Bergamo and N. Bency shall now each ‘. . . be compensated, an equal and proportionate share of all straight time and overtime, at their respective rates of pay, worked by contractor’s employees in the performance of this specific claimed work, commencing on October 9, 2006 and continuing through November 22, 2006.’”**

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 essential fact of this claim is sharply in dispute. The Organization maintains that a bridge was built by a contractor in violation of the notice and contracting provisions of the Agreement. The Carrier flatly denied the accuracy of the allegations of the claim. Moreover, it submitted that it had never used Flat Iron Construction for anything.

The record contains eight photographs in support of the claim along with a statement by the person who took the pictures. These are the only evidentiary documents properly in the record. Although the quality of the photocopies of the photos is better in the Organization's Submission than in the Carrier's, they do not provide meaningful information.

The statement accompanying the photos merely states that they are pictures of the bridge at Delta, Colorado, and goes on to say a photo of the nearest Mile Post is included. In addition, it references a photo of an alleged surveyor's stake with writing that says "center line of track" on it. Finally, the statement describes how one of the photos shows a concrete barrier with "Flatiron" written on it.

We agree that some of the photos show a bridge. The photo of the concrete barrier is not clear enough to read "Flatiron," or anything else for that matter, on it. Moreover, it does not show any discernable tracks in the viewable area. The photos of the bridge appear to show it closed off at one end by chain link fencing. The quality of the photo is sufficiently poor such that no tracks can be identified on the deck. None of the photos explicitly shows the Carrier's tracks leading to or from the

bridge. The photo of the MP 50 marker does not show any bridge, at least not that we can see from its quality. Finally, the “center line of track” stake appears to be alongside some railroad track, but no bridge is seen in the area.

After careful consideration of the record, we must conclude that it does not prove the claim. If the bridge was not built for the Carrier or at the Carrier’s direction, then there was no requirement to provide notice to the General Chairman; nor was its construction by persons or entities unknown a violation of the Agreement.

Given the state of the instant record, we must find that a violation of the Agreement has not been proven.

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 15th day of December 2010.