

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4768

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

BURLINGTON NORTHERN RAILROAD COMPANY

AWARD NO. 10

Carrier File No. DMWB 87-11-12B

Organization File No. B-Y-359

STATEMENT OF CLAIM

1. The Agreement was violated when the Carrier assigned outside forces to perform masonry work, i.e., sandblasting, drilling holes, installation of metal reinforcement rods, tuck pointing and pumping of concrete mixture, on various bridges on the Yellowstone Division beginning on June 29, 1987 (System File B-Y-359/DMWB 871112B).

2. The Agreement was further violated when the Carrier failed to give the General Chairman advance written notice of its plans to contract out said work as required by the Note to Rule 55.

3. As a consequence of the violations referred to in Parts (1) and/or (2) above, Furloughed B&B employees B.A. Casey, T.L. Prescott, C.G. Kemmet, J.G. Fietzek and A.M. Butler shall each be allowed:

" . . . eight (8) hours straight time pay, plus two and one-half (2.5) hours pay at one and one-half times the current rate of pay for mason or cement finishers. This payment is for each claimed date, Monday through Friday,

beginning June 29, 1987 and continuing until Claimants are recalled to perform this work or the outside crew is removed from Company right-of-way. We further request that claimants receive any and all fringe benefits they would have accrued had they been recalled for service to perform the work in accordance with Rule 9. These fringe benefits are to include, but are not limited to holiday pay, vacation accreditation and all health and welfare benefit payments.

### F I N D I N G S

Beginning on June 29, 1987 the Carrier engaged the Osmose Company, an outside concern, to perform structure work on bridges in the Yellowstone Division (four bridges, according to the Organization; two, according to the Carrier). The Carrier did not provide advance notice to the Organization under the terms of Note to Rule 55, which reads in pertinent part as follows:

By agreement between the Company and the General Chairman, work as described in the preceding paragraph which is customarily performed by employees described herein, may be let to contractors and be performed by contractors' forces. However, such work may only be contracted provided that special skills not possessed by the Company's employees, special equipment not owned by the Company, or special material available only when work is such that the Company is not adequately equipped to handle the work, or when emergency time requirements exist which present undertakings not contemplated by the Agreement and beyond the capacity of the Company's forces. In the event that the Company plans to contract out work because of one of the criteria described herein, it shall notify the General Chairman of the Organization in writing as far in advance

of the date of the contracting transaction as is practicable and in any event not less than fifteen (15) days prior thereto, except in emergency time requirements' cases. . . .

The Organization faults the Carrier for its failure to provide such notice. The Organization further argues that the work is such that it should properly have been performed by Maintenance of Way forces, as supported by Rules 1, 2, 5, and 55.

As discussed in other Awards of this Board, Note to Rule 55 is applicable only to work "customarily performed by employees described herein". Even where this threshold condition is met, such work may be contracted to outside concerns, under special situations listed therein, provided the advance notice and opportunity for conference thereon is provided.

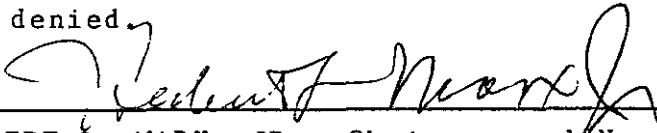
In this instance, it is the Carrier's position that the particular bridge work herein required epoxy structural repair, a technique which has not been employed by Carrier employees as part of their customary duty and which, more significantly, has been performed by the Osmose Company on the Carrier's property since 1976. While the Organization offered evidence that Carrier employees have performed similar work and/or that the work is not as complex as the Carrier would describe it, the fact remains that the Organization

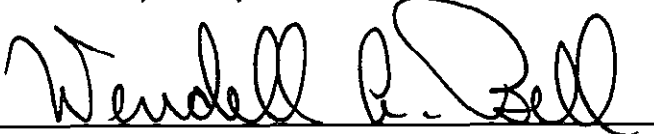
has not demonstrated that the type of work involved here has been "customarily performed" by Carrier employees.


The Board need not review other subsidiary aspects of this dispute where the underlying test of customary performance is not met. This conclusion does not, of course, diminish the Organization's right, as referenced by the cited Rules, to bridge repair work in general. Indeed, some aspects of the work here under review may well have come within the parameters of such work. There is, however, insufficient support, in this instance, for a finding that the epoxy repair work could have been assigned efficiently on a piece-meal basis between Carrier forces and those of the outside concern. The strictures of Note to Rule 55 are not applicable where a showing of customary performance of the work is not clearly demonstrated.

A W A R D

Claim denied.

  
HERBERT L. MARX, JR., Chairman and Neutral Member

  
WENDELL A. BELL, Carrier Member

  
MARK J. SCHAPPAUGH, Employee Member

NEW YORK, NY

DATED: 11-21-91