

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 5564

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES	)
	) Case No. 21
and	)
	) Award No. 15
NORTHEAST ILLINOIS REGIONAL COMMUTER	)
RAILROAD CORPORATION	)

Martin H. Malin, Chairman & Neutral Member
R. C. Robinson, Employee Member
J. P. Finn, Carrier Member

Hearing Date: January 7, 2009

STATEMENT OF CLAIM:

- (1) The Agreement was violated when the Carrier assigned junior outside forces to perform Maintenance of Way and Structures Department work (bridge rebuilding work) at Bridge 17-1 on the Carrier's Electric District from June 20 through 30, 2004 instead of Messrs. D. Gary, A. Bailey, T. Hubbard, P. Garcia, G. Tinsley, B. Cassidy, D. Jones, D. Stix, I. Morales, L. Nichols, J. Median, L. Cole, Jr., M. Williams, M. Villarreal, R. Carter, E. Balark., C. Miller, S. Barba and F. Guzman, Jr. (System Files C062003.1/08-10-469, C062003/08-10-460, C062003.2/08-10-469 and C062003.2/08-10-469).
- (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 subcontracting as required by Rule 1(B).
- (3) As a consequence of the violations referred to in Parts (1) and (2) above, Messrs. D. Gary, A. Bailey, T. Hubbard, P. Garcia shall be allowed eighty-four (84) hours at their respective time and one-half rates of pay; Messrs. G. Tinsley, B. Cassidy, D. Jones, D. Stix, I. Morales, L. Nichols, J. Median, L. Cole, Jr., M. Williams, M. Villarreal, R. Carter, E. Balark., C. Miller, S. Barba and F. Guzman, Jr. shall now be allowed eighty-four (84) hours at their respective time and one-half rates or pay.

FINDINGS:

Public Law Board No. 5565 upon the whole record and all of the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

By letter dated April 8, 2002, Carrier notified the Organization of its intent to contract out reconstruction of Bridge 17-1 in Riverdale, Illinois, because Carrier did not have the equipment needed to perform the work and because covered forces lacked the special skills needed to perform the work. The letter advised that Carrier intended to use Maintenance of Way forces for all flagging, electrical line protection and trackwork in connection with the project. The notice was issued in accordance with Agreement Rule 1(c) which provides:

It is the intent of this Agreement for the Carrier to utilize Maintenance of Way employees under the rules of this Agreement to perform the work included within the Scope of the Agreement; however it is recognized that in certain specific instances the contracting out of such work may be necessary provided one or more of the following conditions are shown to exist:

- (1) Special skills necessary to perform the work are not possessed by its Maintenance of Way employees.
- (2) Special equipment necessary to perform the work is not owned by the Carrier and/or is not available to the Carrier for its use and operation therefor by its Maintenance of Way employees.
- (3) Time requirements exist which prevent undertakings not contemplated by the Agreement that are beyond the capacity of its Maintenance of Way employees.
- (4) Federal and State laws specifically require the Carrier to submit such work to public bidding.

In the event the Carrier plans to contract out work because of one or more of the criteria described above, it shall notify the General Chairman 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. Such notification shall clearly set forth a description of the work to be performed and the basis on which the Carrier has determined it is necessary to contract out such work according to the criteria set forth above.

In the event the General Chairman, or his representative, requests a meeting to discuss matters relating to the said contracting transaction, the designated representative of the Carrier shall promptly meet with him for that purpose and the parties shall make a good faith effort to reach an agreement setting forth the manner in which the work will be

performed. It is understood that when conditions 3 and/or 4 are cited as criteria for contracting work, the Carrier, to the extent possible under the particular circumstances, shall engage its Maintenance of Way employees to perform all maintenance work in the Maintenance of Way Department and construction work in the Track Subdepartment, with due consideration given to the contracting out of construction work in the Bridge and Building Subdepartment to the extent necessary. If no agreement is reached, the Carrier may nevertheless proceed with said contracting and the Organization may file and progress claims in connection therewith.

Nothing herein contained shall be construed as restricting the right of the Carrier to have work customarily performed by employees included within the Scope of this Agreement from being performed by contract in emergencies that affect the movement of traffic when additional force or equipment is required to clear up such emergency condition in the shortest time possible. In such instances, the Carrier shall promptly notify the General Chairman of the work to be contracted and the reasons therefor, with such information to be confirmed in writing within fifteen (15) days of the date such work commences.

In accordance with Rule 1(c), the General Chairman requested a conference which was held on April 25, 2002. At the conference, Carrier reiterated its intent and justification to contract out the work and reiterated that all trackwork would be performed by Agreement-covered employees.

Demolition work on the first bridge began on June 20, 2003. However, on June 22, 2003, both bridges were destroyed by fire, causing the complete shutdown of operations on the Electric District. The contractor performed all work on an emergency basis over the next eight days to restore service as quickly as possible,

Certainly, Carrier enjoys wide latitude to exercise its discretion in emergency situations and there is no dispute that the instant case involved a bona fide emergency. However, there is no showing in the record that the Claimants could not have performed the trackwork on an emergency basis. Indeed, prior to the fire, it was understood between the parties that Agreement-covered employees would perform the trackwork.

Accordingly, the claim must be sustained with respect to the trackwork performed by the outside contractor. However, the claim for 84 hours is, on its face, excessive. The trackwork would have been performed at the very end of the project and no basis for the claim of 84 hours per Claimant exists in the record. Considering the evidence in the record, we shall award one day's pay (i.e. eight hours) per Claimant.

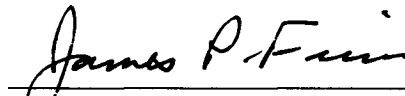
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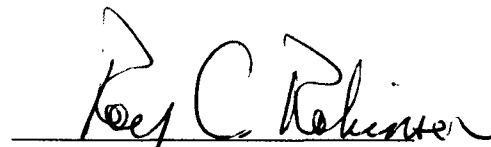
Claim sustained in accordance with the Findings.

ORDER

The Board having determined that an award favorable to Claimant be issued, Carrier is ordered to implement the award within thirty days from the date two members affix their signatures hereto


Martin H. Malin, Chairman


J. P. Finn
Carrier Member


R. C. Robinson, Employee Member
Employee Member

Dated at Chicago, Illinois, March 31, 2009