

BEFORE PUBLIC LAW BOARD NO. 6043

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

ILLINOIS CENTRAL RAILROAD COMPANY

Case No. 1

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier assigned outside forces (Osmose Wood Preserving Company of America, Inc.) to replace wooden bridge pilings and collar braces on Bridge LZ 12-9 on the Hammond District near Stevendale, Louisiana from September 13 through 26, 1991 (Case No. 179 NofW).
2. The Agreement was further violated when the Carrier failed to give the General Chairman proper advance notice, in writing, of its intention to contract out the work in question in accordance with Appendix 'p' (Article IV of the May 17, 1968 National Agreement).
3. As a consequence of the violations referred to in Parts (1) and/or (2) above, the B&B employees on Gang 2401, i.e., one foreman, one carpenter and three bridgemen, and the Group B Machine Operator assigned to Gang 4443 shall each be compensated eighty (80) hours' pay, at their respective straight time rates, and fifty-two (52) hours' pay, at their respective time and one-half rates, for the work performed by the outside contractor. Repairman R. M. Russell shall now have his name restored to the appropriate seniority roster.

FINDINGS:

The Organization filed the instant claim on behalf of the Claimants contending that the Carrier violated the Agreement when it hired Osmose Wood Preserving of America,

Inc. to perform work that has been customarily and traditionally assigned to the B&B forces. The Organization contends that the notice of intent to contract out that was issued by the Carrier specified that the Carrier intended for the outside contractor to restrict its work to that of the application of a preservative to the pilings. The Claimants, however, observed the outside contractor replacing the pilings, which, the Organization contends, constitutes work that the Claimants have customarily performed in the past.

The Carrier contends that the work that the outside contractor performed does not fall under the scope of work performed by the B&B forces. The Carrier argues that the notice of intent stated that the outside contractor would be used to inspect and restore pilings. In fact, the Carrier argues that it has previously contracted with Osmose Wood Preserving Company on a regular basis to perform regular inspections and restorations on a system wide basis. The Carrier points out that the outside contractor replaced portions of the pilings by gluing in a new section with a special epoxy on which the contractor itself holds a patent. In addition, the Carrier contends that the outside contractor used specialized bombardier access equipment which the Carrier does not own. Furthermore, the Carrier points out that the Claimants were fully employed at the time that the work was performed by Osmose and, therefore, the Claimants suffered no loss of pay. The Carrier argues that the Organization has failed to prove that the Carrier violated the Agreement.

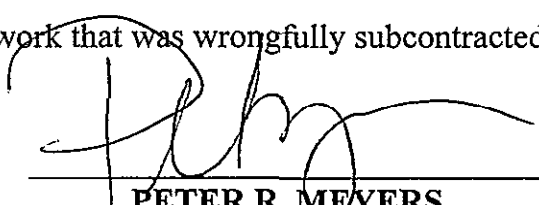
The parties being unable to resolve the issue, this matter came before this Board.

This Board has reviewed the record in this case and we find that based on the unique circumstances of this factual situation, the Carrier violated the Agreement when it subcontracted outside forces to perform the work replacing the wood bridge pilings and collar braces.

A review of the record makes it clear that the Carrier must pay to the Organization the sum of \$1,800.00 to be divided by the Organization among the members of the gang who should have been assigned the work at issue here. This Award is not precedential since the facts were so unique and this Award may not be cited as precedent in any other case.

AWARD

Claim sustained. The Carrier violated the Agreement by allowing outside forces to perform the work at issue. The Carrier shall pay to the Organization the sum of \$1,800.00 to be divided by the Organization among the members of the gang who should have been assigned the work that was wrongfully subcontracted.


PETER R. MEYERS
Neutral Member


CARRIER MEMBER


ORGANIZATION MEMBER

Dated: 7-6-98

Dated: 7-22-98