

AWARD NO. 5  
NMB CASE NO. MW-32151  
UNION CASE NO.  
COMPANY CASE NO.

PUBLIC LAW BOARD NO. 6086

PARTIES TO THE DISPUTE:

TERMINAL RAILROAD ASSOCIATION  
OF ST. LOUIS

- and -

BROTHERHOOD OF MAINTENANCE  
OF WAY EMPLOYEES

STATEMENT OF CLAIM:

- (1) The Carrier violated the Agreement when it assigned outside forces (Taylor Contracting) to perform Maintenance of Way and Structures Department work (remove road crossing pads, raise tracks and pave the crossing) at the Monsanto tracks on Highway 3 in Illinois on August 20 and 21, 1993 (System File 1993-35/013-293-14).
- (2) The Agreement was further violated when the Carrier failed to notify and discuss with the General Chairman its intent to contract out said work as required by Article IV of the 1968 National Agreement.
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Messrs. R. Gartner, R. Gray, D. Matthes, A. Cracchiolo and C. Lovett shall each be allowed eight (8) hours' pay at their respective straight time rates and eight (8) hours' pay at their respective time and one-half rates.

OPINION OF BOARD: The following facts are not in dispute. R. Gartner, R. Gray and D. Matthes (Claimants) have established and hold seniority in the Track Sub-department as a Track Foreman, Machine Operator, and Motor Truck Operator, respectively. Claimants were regularly assigned as such Monday through Friday, with Saturday and Sunday assigned rest days. At approximately 9:30

AWARD NO. 5  
NMB CASE NO. MW-32151  
UNION CASE NO.  
COMPANY CASE NO.

am on Friday, August 20, 1993, the Illinois State Department of Transportation (hereinafter referred to as "DOT") contacted Carrier to report that a sewer located under Highway 3 and Carrier's railroad tracks, had collapsed. The sewer is owned by the Village of Sauget, Illinois and the DOT advised Carrier that the collapse of the highway and the crossing was caused by water leaking from the sewer underneath the track.

When Carrier's Engineer of Track arrived at the rail crossing, he was informed that the Village and DOT representatives had closed State Highway 3, which is a main thoroughfare through the Village and a direct link to an on ramp to the bridge which spans the Mississippi River to St. Louis. After examining the suspect track and observing "significant erosion", Carrier's Engineer of Track took the rail crossing out of service. At the direction of State and Village representatives, Taylor Contracting, a vendor working on another highway project in the area, diverted the necessary equipment and personnel to perform expedited repair of the damage to Carrier's crossing and the State's highway, caused by the leak in the sewer owned by the Village. The required highway and railroad crossing repairs were completed on August 21, 1993 and all associated costs were paid for by the Village of Sauget.

On October 9, 1993 the Organization submitted a claim on behalf of Messrs. Gartner, Gray, Matthes, Cracchiolo, and Lovett, for eight (8) hours pay for Friday, August 20 and for eight (8) hours at the time and one-half rate of pay for Saturday, August 21, alleging that Carrier violated the Agreement when it allowed Taylor Contracting to perform work reserved to B&B employees by the Scope Rule. The General Chairman also protested that Carrier had failed to send prior notice of its intent to contract out the work in dispute or conference the matter before the fact. Carrier denied the

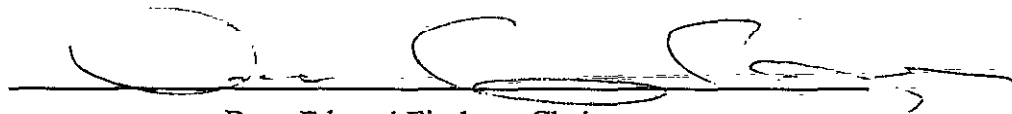
AWARD NO. 5  
NMB CASE NO. MW-32151  
UNION CASE NO.  
COMPANY CASE NO.

claim on the premise that the "emergency condition" warranted the expedited handling and that the work was done at the behest, under the direction of and at the cost of the Village of Saugat.

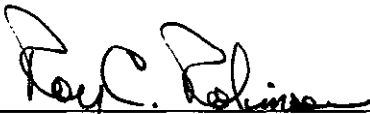
For reasons explained in award No. 2, Carrier's procedural objection under Rule 42 (b) is not well-placed. On the merits, however, the record facts support Carrier's position and require denial of this claim. See NRAB Third Division Awards 28526, 29061 and 30942.

AWARD

Claim denied.



Dana Edward Eischen, Chairman  
Signed at Spencer, NY on August 26, 2000



Union Member

8/31/00

Company Member