

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 (Osmose Wood Preserving) to perform Maintenance of Way and Structures Department work (steel repairs) on the MacArthur Bridge beginning October 11, 1993 and continuing (System File 1993-38/013-293-14).

(2) As a consequence of the violation referred to in Part (1) above, furloughed B&B employes A. Rameriz, J. King and Messrs. L. V. Gann, J. K. Roberds, A. J. Cracchiolo, S. Wolf, C. Lovett, W. Vickers, C. Carrico, A. Smoot, N. Libell, R. Pruitt and S. Millard shall each be allowed eight (8) hours' pay at their respective straight time rates and two (2) hours' pay at their respective time and one-half rates for each day work was performed during their regularly scheduled five (5) day work week (Monday through Friday) and ten (10) hours' pay at their respective time and one-half rates for each day work was performed on their scheduled rest days (Saturday and Sunday) beginning October 11, 1993 and continuing until the violation ceased.

OPINION OF BOARD: On September 10, 1993, Carrier sent the following notification to the

General Chairman of the Organization:

Under provisions of Article IV of the May 17, 1968 Agreement, this will serve to advise of Carrier's intention to contract out to Osmose Wood Preserving, Inc., the work of steel repairs to the MacArthur Bridge. Carrier is not well equipped to perform a project of this magnitude. Due to all the other work on the property that our Maintenance of Way employees and equipment are already committed to, Carrier desires to contract out this steel repair work commencing around October 1, 1993.

AWARD NO. 8
NMB CASE NO. MW-32154
UNION CASE NO
COMPANY CASE NO.

Carrier Chief Engineer of Maintenance Trice concluded that notice by informing the General Chairman that he would be available to conference the issue should the General Chairman deem it necessary. A conference was requested and held on September 21, 1993 during which the General Chairman protested the proposed contracting. In that connection, the General Chairman requested copies of each of the bids Carrier had received for the steel repair work, as well as copies of the contract for the work under discussion. Carrier denied the request premised on the lack of agreement provisions or requirements governing disclosure of same.

On October 14, 1993, the Organization initiated a claim on behalf of two (2) long-term laid-off employees, in addition to the then-employed employees noted *supra*, maintaining that Carrier had violated Rules 3, 5, 6 and 8 of the Agreement, in addition to Article IV of the 1968 National Agreement and the 1981 Borg-Hopkins Letter of Understanding when it contracted with Osmose Wood Preserving to perform the disputed work. By letter dated December 8, 1993, Chief Engineer Trice denied the claim, asserting that the Organization had received proper notice in accordance with the contracting-out provisions of the 1968 Agreement and that the disputed work was "of a character customarily and historically" contracted out.

By letter dated January 30, 1994, the General Chairman purported to appeal that denial of his October 14, 1993 claim to Carrier's highest designated officer. However, that appeal letter referred to a claim dated "October 14, 1994", which the General Chairman identified as "my file no. 1993-38". The Director Labor Relations & Personnel replied to the General Chairman, by letter of February 14, 1994, as follows:

AWARD NO. 8
NMB CASE NO. MW-32154
UNION CASE NO
COMPANY CASE NO.

This will acknowledge your letter dated January 30, 1994, organization File No. 1993-38, allegedly appealing the decision rendered by Chief Engineer C. D. Trice in his letter to you dated December 8, 1993, relative to claim submitted on behalf of various Bridge & Building employees.

First of all, you state that, by your letter dated October 14, 1994, you laid claim for the aforementioned B&B employees. This is not possible, as today is only February 14, 1994. In addition, you refer to your File No. 1993-38, which File Number does not match any claim on file with the Carrier showing such a number.

Obviously, you have the wrong date and wrong file number; therefore, I am unable to match it with a claim for consideration and claim is respectfully denied.

The General Chairman responded some two (2) months later, by letter dated April 11, 1994, reading in pertinent part as follows:

. . . In your letter you point out that I reference my letter dated October 14, 1994, as you are aware this should have been October 14, 1993, this is my file 1993-38 that was changed from file 1993-39 that was mentioned in my claim to Mr. Trice. Should you wish to have additional time to answer this claim please advise, as you are aware this claim is a work loss claim for several B&B employees due to these employees not being used on their rest days and for the laid off employees for all time that they lost due to this contracting

By letter of April 20, 1994, Carrier's highest designated claims officer replied, as follows:

This will acknowledge your letter dated April 11, 1994, Organization File No. 1993-39, that you now advise is new organization File No. 1993-38.

This is to advise that you have failed to appeal subject claim to this office within the required sixty (60) days from receiving Chief Engineer Trice's denial letter dated December 8, 1993, rendering same null and void.

Therefore, there is no basis for claim and same remains respectfully declined. Consequently, in accordance with Rule 42 of the current Agreement, I am closing out the file.

For reasons explained in Award No. 2 of this Board, Carrier's assertion that this claim should be barred from consideration due to the Organization's failure to notify Carrier of its rejection of the final denial prior to initiating proceedings before the NRAB is denied. However, we are persuaded that Carrier is correct in its position that the claim must be dismissed because the General Chairman failed to properly appeal Chief Engineer Trice's December 8, 1993 denial of this claim to Carrier's highest designated officer within the requisite sixty (60) days, in accordance with Rule 42 of the

AWARD NO. 8
NMB CASE NO. MW-32154
UNION CASE NO
COMPANY CASE NO.

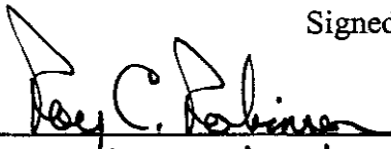
Agreement. Standing alone, the manifest typographical error in the October 14, 1994 reference in the General Chairman's January 30, 1994 letter would not be enough warrant dismissal for procedural impropriety. But the Organization filed more than one contracting out claim on October 14, 1993 and an unannounced and belatedly asserted change in the file number utilized by the Organization for this particular claim engendered sufficient confusion to render the January 30, 1994 appeal letter ineffective. The General Chairman's attempt to correct the record by his April 11, 1994 letter came too late under the time limits of Rule 42. Accordingly, this claim is dismissed without any expression or opinion by this Board concerning its underlying merits.

AWARD

Claim dismissed.



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



Union Member

8/31/00

Company Member