

PUBLIC LAW BOARD NO. 6399

**CASE NO. 61
AWARD NO. 61**

**Brotherhood of Maintenance of Way Employees
Division - IBT Rail Conference**

and

**Norfolk Southern Railway Company (former
Norfolk & Western Railway Company)**

**Claimants: G. Cleeton, H. Cook, K. Middleton, J. Vestal, M. Johnson, J. Dawson, and
P. Schopp**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement when it assigned outside forces to perform Maintenance of Way and Structures Department work of making repairs (cutting the rivets in upper gusset plates, installing high strength bolts, nuts and washers, installing new gusset plates, inspecting for cracks and other miscellaneous work) to the St. Charles Bridge between Mile Post 21.36 and Mile Post 22.8 near Earth City, Missouri on the St. Louis District, Illinois Division, beginning on April 17, 2017 and continuing until this matter is resolved (Carrier’s File MW-DECR-17-73-BB-428 NWR).
2. The Agreement was further violated when the Carrier failed to notify the General Chairman, in writing, in advance of its plans to contract out the work referred to in Part 1 above and when it failed to make a good-faith attempt to reduce the incidence of subcontracting and increase the use of its Maintenance of Way forces or reach an understanding concerning such contracting as required by Appendix ‘F’ of the Agreement and the December 11, 1981 National Letter of Agreement.
3. As a consequence of the violations referred to in Parts 1 and/or 2 above, Claimants G. Cleeton, H. Cook, K. Middleton, J. Vestal, M. Johnson, J. Dawson and P. Schopp shall now be compensated the total man-hours worked on the project to be divided equally between the Claimants.”

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that the Carrier and Employee involved in this dispute are respectively Carrier and Employee within the meaning of

the Railway Labor Act, as amended, that the Board has jurisdiction over the dispute involved herein and that the parties were given due notice of hearing thereon.

The Claimants have established and maintain seniority in the Carrier's Maintenance of Way and Structures Department. The Claimants were assigned to the Bridge and Building Department.

On January 17, 2017, the Carrier served a notice on the Brotherhood of Maintenance of Way Employees ("MOW") of its intent to make structural repairs to St. Charles Bridge located at MP S-22.05. The notice described the work to be performed and the reason for contracting the work:

The Carrier does not have available the specialized equipment, supervision, or manpower necessary to timely complete a project of this magnitude and all other employees are committed to other projects. Furthermore, past practice on the property has been to contract projects of this character.

The Organization requested a conference to discuss the contracting, which was held on February 21, 2017. The parties discussed the notice and the project but were unable to reach agreement.

On April 17, 2017, the Carrier assigned outside forces to make repairs (cutting the rivets in upper gusset plates, installing high strength bolts, nuts, and washers, installing new gusset plates, inspecting for cracks, and other miscellaneous work) to the St. Charles Bridge between Mile Post 21.36 and Mile Post 22.8 near Earth City, Missouri on the St. Louis District, Illinois Division.

The Organization filed this claim which was appealed to the highest officer on-property. As the parties were unable to resolve the claim, it is now properly before this Board for final adjudication.

The Organization contends that the work of making bridge repairs (cutting the rivets in upper gusset plates, installing high strength bolts, nuts, and washers, installing new gusset plates, inspecting for cracks, and other miscellaneous work) is reserved to the Carrier's Maintenance of Way ("MOW") forces. The Organization contends that the Carrier does not deny that its forces customarily, historically, and traditionally perform the claimed work which is reserved to its members.

The bridge is located on territory covered by the July 1, 1986 N&W-Wabash Agreement between the Carrier and the BMWED. The Organization contends that Appendix "F" governs the extent to which the Carrier is permitted to contract out MOW work. Appendix "F" reads as follows,

In the event a carrier plans to contract out work within the scope of the applicable schedule agreement, the carrier shall notify the General Chairman of the organization involved in writing as far in advance of the date of the contracting transaction as is practicable and in any event not less than 15 days prior thereto. If 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. Said carrier and organization representatives shall make a good faith attempt to reach an understanding

concerning said contracting, but if no understanding is reached the carrier may nevertheless proceed with said contracting, and the organization may file and progress claims in connection therewith.

The Organization contends that once it shows that the work is Scope-covered, the burden of proof shifts to the Carrier to show that it properly notified and conferred with the General Chairman. The Organization contends that the Carrier's notice, dated January 17, 2017, was insufficient. At the conference, the Organization immediately rejected the Carrier's purported reason for contracting out the Scope-covered work. The Organization contends that the conference did not include good-faith discussions surrounding the relevant contracting transaction.

The Organization contends that any manpower shortage alleged by the Carrier was the direct result of the Carrier's failure to maintain a stable workforce. The Organization contends that the Carrier was intentionally reducing its workforce at the time of the dispute. Additionally, the Organization contends that the Board should reject the Carrier's defenses because the proper forum for discussing the Carrier's purported reasons for contracting out is during the discussions required by Appendix "F".

The Organization contends that the fully qualified and available Claimants were entitled to the work opportunity. The Organization contends that the Claimants are entitled to a sustaining award and a full monetary remedy.

The Carrier does not dispute the Organization's assertion that the claimed work, making bridge repairs, was Scope-covered work, by virtue of it having been historically and customarily performed by MOW forces.

The Carrier contends that while some MOW employees have participated in large-scale bridge repair, the Carrier also has a long history of using contractors to perform this work with the full knowledge of the Organization. The Carrier contends that the Organization cannot meet its burden to show that the assignment of the bridge structural repair work to contractors violated the Agreement.

The Carrier contends that there is no dispute that it timely provided notice of its intent to contract the work pursuant to Appendix F of the Agreement. The Carrier contends that its notice described with specificity the exact character of work proposed to be performed by contractors and explained the Carrier's rationale for engaging contractors. It is also undisputed that the Carrier's Bridge Supervisor conferenced the notice with the Organization.

The Organization has presented sufficient evidence that the claimed work was Scope-covered. Therefore, pursuant to Appendix F, the Carrier was required to demonstrate that it served advance written Notice of its Intent to contract out this work and that it conferenced with the Organization upon request. The Carrier's assertion that it provided a contracting notice that described the work and the reason for contracting out stands unrefuted in the record. Additionally, the parties met after the Organization requested a contracting conference to discuss the notice.


The Board finds that the Carrier properly gave notice to the Organization and conferenced regarding the work upon request. The Organization has failed to present sufficient evidence to rebut the Carrier's assertion that a good faith discussion ensued. At most, it has created a dispute in facts that is beyond this Board's jurisdiction to resolve. Therefore, the Organization has failed to prove that Appendix F was violated, and its claim must be denied.


AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.


Kathryn A. VanDagens,
Chairman



Scott M. Goodspeed, Carrier Member



Adam Gilmour, Employee Member

Dated: April 8, 2024