

SPECIAL BOARD OF ADJUSTMENT NO. 1049

AWARD NO. 172

Parties to Dispute:

BROTHERHOOD OF MAINTENCE OF WAY EMPLOYES

AND

NORFOLK SOUTHERN RAILWAY COMPANY

Statement of Claim:

“Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier assigned outside forces to perform bridge repair work at Mile Post 242.6W beginning on August 8, 2005 through October 3, 2005 (Carrier's File MW-DECR-05-42-BB-350).
2. As a consequence of the violation referred to in Part 1 above, Bridge and Building (B&B) Employees R. A. Williams, R. L. Ziliak, R. D. Ziliak and E .K. Mason shall be paid at the over time rate of pay for all hours worked by the contractors on the dates mentioned, a total of two hundred forty (240) hours overtime for each Claimant.”

Upon the whole record and all the evidence, after hearing, the Board finds the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended, and this board is duly constituted by agreement under Public Law 89-456 and has jurisdiction of the parties and subject matter.


AWARD

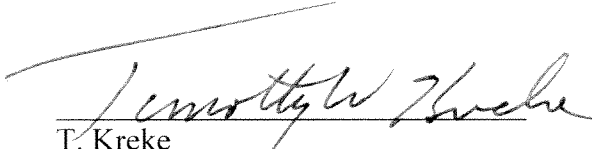
After thoroughly reviewing and considering the record and the parties' presentations, the Board finds that the claim should be disposed of as follows:

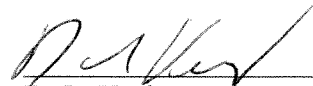
The Claimants in this case allege that the contracting out of a rebuild project is in violation of the agreement between the Organization and the Carrier that prohibits contracting out work in the scope and capability of the workforce. The claim was initiated on October 5, 2005 by the Organization and went through the customary review process that resulted in a February 27, 2006 decline of the claim by Labor Relations. The Carrier has asserted that the rule in question does not reserve any type of specific work, and the type of work contracted out in this case is consistent with the use of contractors that have performed bridge rebuilding projects. Additionally, the Carrier notes no employee was furloughed due to the use of contractors in this case.

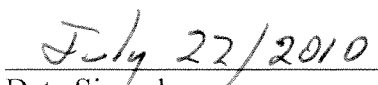
There is insufficient evidence that the contracted work was of a character or nature that could have been completed by the existing workforce as is required Rule 1. The burden of proof is on the Organization to demonstrate that a violation occurred, and the evidence presented in the record during the handling of this particular case is not sufficient.

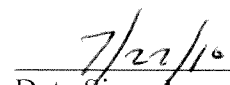
After review of the applicable contract provisions, we find that the Claim must be denied.


M. M. Hoyman
Chairperson and Neutral Member


T. Kreke
Employee Member


D. L. Kerby
Carrier Member


Date Signed


Date Signed

Issued at Chicago, Illinois on May 27, 2010.