

**SPECIAL BOARD OF ADJUSTMENT NO. 1049**

**AWARD NO. 171**

Parties to Dispute:

**BROTHERHOOD OF MAINTENCE OF WAY EMPLOYEES**

**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 151.4W beginning on September 7, 2004 and continuing (Carrier's File MW-DECR-04-54-BB-410)

2. As a consequence of the violation referred to in Part I above, Bridge and Building (B & B) employees, L.L. Bates, Larry Robb, John Beasley, Rick Lynn and Steve Schrodt shall be paid at the overtime rate of pay for all hours worked by the contractors on the dates mentioned above and continuing."

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 for a 1,024 foot long replacement trestle consisting of 32 ballast-decked spans is in violation of the agreement between the Organization and the Carrier which prohibits contracting out work that is in the scope and capability of the workforce. The Claim was initiated on November 2, 2004 by the Organization and went through the customary review process that resulted in an April 6, 2005 decline of the claim by Labor Relations.

The record before the Board supports the fact that the rule in question does not expressly reserve any type of specific work. Further, the type of work contracted out in


this case is consistent with the use of contractors that have performed other trestle replacements. Additionally, there was no employee that was furloughed due to the use of contractors in this case, a fact that the Organization has not disputed.

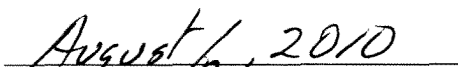
After review of the applicable contract provisions, we find there is insufficient evidence to support the Claim that the contracted work was of a character or nature that is reserved for completion by the existing workforce. We concur with the Carrier that the burden of proof is on the Organization to demonstrate that a violation occurred, and the evidence presented in the handling of this case is not sufficient to meet that standard.

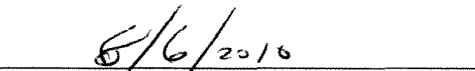
The claim is denied.

  
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 June 19, 2010.