Award No. 4783
Docket No. MW-4712

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Mortimer Stone, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the effective agreement by assigning to a contractor the work of repairing the roof on Warehouse 27, Poydras Yard, New Orleans, during the months of August and September, 1946.

(2) The claimants, B&B Carpenters Sam Turner and certain other members of B&B Gang No. 4 be reimbursed for the monetary losses suffered by them.

EMPLOYES' STATEMENT OF FACTS: During the months of August and September, 1946, the employes of an outside contractor, Taylor Seidenbach Company of New Orleans, Louisiana, repaired the roof of Warehouse No. 27 in Poydras Yards, New Orleans, Louisiana.

The Carrier owns the warehouse referred to although the employes of the contractor who performed the work held no seniority under the effective agreement. The repairs made to the roof consisted of applying roofing felt with hot asphalt.

During the period the contractors forces were repairing the roof the following B&B employes holding seniority were laid off in force reduction:

Sam Turner, Henry Lewis, Joe Dawson, Joseph Edwards, Leonder Colkmire, Charles Gras, Octave Chiasson, Robert Boada, and Sylvester Pontiff.

In addition, the following employes were reduced from B&B carpenters to laborers:

Willie Howard, John Tate, Leon McFarland, Sim Caston, Joseph Posey, Robert Jackson, Sam Brown, Lee Hardy, Willie Hughes, and John Bennett.

As a result of being laid off during the period the contractors forces were engaged in repairing the Warehouse roof, the estimated monetary loss suffered by the employes effected are as follows:

Sam Turner	Laid off	15	days — Monetary loss	$	95.40
Henry Lewis	Laid off	6	days — Monetary loss		50.16
Joe Dawson	Laid off	6	days — Monetary loss		50.16
Joseph Edwards	Laid off	15	days — Monetary loss		122.40
Leander Colkmire	Laid off	5	days — Monetary loss		41.80
Charles Gras	Laid off	6	days — Monetary loss		58.80
Octave Chiasson	Laid off	6	days — Monetary loss		50.16

POSITION OF CARRIER: The Employes' claim is unsupported by the rules of the agreement dated September 1, 1934, as the work in question was performed in accord with Item 10 of lease reading (see Carrier's Exhibit "A"):

> "(10) **The Lessee agrees that**, except as hereinafter provided, no repairs whatsoever shall be due by the Lessor to the leased premises, and that, except as hereinafter provided, **the Lessee, at its cost and expense, will maintain the leased property in good condition and make all repairs**, it being understood, however, that any structural alterations shall be subject to the approval of the Lessor."

In an analogous case covered by Third Division Award 1610, the Board, assisted by Referee Bruce Blake, stated:

> "If, under the terms of the lease, the lessee covenanted to do such maintenance work as painting, it might well be contended that the did not come within the purview of the scope rule. On the other hand, it may be that under the terms of the lease the Carrier was obliged to paint the elevator when need be. Since it has not seen fit to introduce the lease in evidence and has not denied the assertion that it contracted the work, we cannot escape the conclusion that it did, in fact, contract the paint job and did pay for it."

The claim should be denied.

"Exhibits not reproduced).

OPINION OF BOARD: Carrier owned a warehouse and leased a portion of it to The New Orleans Grain and Feed Company effective January 1, 1944, for a term of five years, with renewal privilege for like term, for cash monthly rental, upon covenant of lessee that it would there maintain a malt drying and stock feed manufacturing plant. Lessee further agreed that no repairs should be due by lessor, and that lessee should at its cost and expense maintain the leased property in good condition, make all repairs, and assume the risk of all loss by fire by reason of proximity to lessor's railroad or however caused. Pursuant to the requirements of that lease, the lessee in the summer of 1946 had repair work done on the leased premises, consisting of reroofing some 16,000 square feet of roof, through a contracting firm. While this reroofing was being performed by outside employes, several employes holding seniority under the Maintenance of Way Agreement were laid off or demoted in force reduction and this claim is premised on the contention that this work comes within the scope of Carrier's Agreement with the Brotherhood; that the Agreement was violated by contracting out the work, and that penalty payment should be assessed therefor.

Carrier denies that this work came within the scope of Claimant's Agreement in that it was performed on property leased out by Carrier and lessee was obligated for its performance by the terms of the lease, and relies on Award 1610 where a similar claim resulted from the painting by contract of a leased elevator. This Board there said: "If, under the terms of the lease, the lessee covenanted to do such maintenance work as painting, it might well be contended that the job did not come within the purview of the scope rule. On the other hand, it may be that under the terms of the lease the Carrier was obliged to paint the elevator when need be. Since it has not seen fit to introduce the lease in evidence and has not denied the assertion that it contracted the work, we cannot escape the conclusion that it did, in fact, contract the paint job and pay for it."

The Committee contends that so to hold would permit the Carrier to abrogate its Agreement by means of leases of its property; and that since the property is owned by the raidroad, its repair and maintenance come within the scope of the Agreement.

Here the lease, including lessee's covenant to repair is contained in the submission and we might rest our decision here on the precedent reasoning in Award 1610, but we are unwilling to follow its basis of rule. We think the mere fact of ownership of property by the Carrier is not sufficient ground

for claim by the Organization of application of contract rights thereon. The common business of the Carrier and Organization is railroad operation, and it is to that business and the property employed in that business alone, that their Agreements apply. Where property is so used no lease or other device should exclude the operation of the Agreement thereon, and where a Carrier owns property used not in the operation or maintenance of its railroad, but for other and separate purposes, such property is outside the purview of the Agreement. The leased warehouse here involved was leased and used for purposes excluding it from the Agreement.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

The Agreement was not violated.

AWARD

Claims (1) and (2) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois this 21st day of March, 1950.