



Award Number 17354

Docket Number MW-17892

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Murray M. Rohman, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

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

- (1) The Carrier violated the Agreement when, beginning December 2, 1966, it assigned the work of constructing an addition to the Trainmen's Bunkhouse at Marmarth, North Dakota to outside forces. (System Case D-1588/8)
- (2) B&B Foreman R. O. Chambers and B&B Carpenters V. H. Hasvold, H. J. Leary, D. L. McClain, I. C. Twete, J. F. Giese, R. C. Risch, V. M. Matheis each be allowed pay at their respective straight time rates for an equal proportionate share of the total number of man-hours consumed by outside forces in performing the work referred to in Part (1) of this claim."

EMPLOYES' STATEMENT OF FACTS: The facts in the instant case are fully and accurately set forth in a letter dated April 26, 1967, which reads:

"April 26, 1967

Mr. F. A. Barton
Superintendent
Chicago, Milwaukee St. Paul & Pacific RR.,
Aberdeen, South Dakota

Dear Sir:

I am herewith appealing to you from a decision of disallowance rendered by Chief Carpenter J. E. Collings in a claim presented to him as the result of the assignment of a contractor to construct an addition to the Trainmen's Bunkhouse at Marmarth, North Dakota. For your ready reference I am enclosing a copy of the letter of claim presentation, including the attachment referred to therein.

The work of constructing the subject addition was contracted to Mr. R. K. Martin of Mobridge, South Dakota. Mr. Martin is, in fact, not a building contractor. As you know, he is employed by the Milwaukee Railroad as a fireman on the territory immediately

Letter written by Mr. Amour to Mr. Joslin
under date of September 1, 1967Carrier's Exhibit "B"

Letter written by Mr. Amour to Mr. Joslin
under date of October 18, 1967Carrier's Exhibit "C"

(Exhibits not reproduced)

OPINION OF BOARD: The instant claim involves the use of outside forces to construct an addition to the Trainmen's Bunkhouse at Marmarth, North Dakota. The work in question began on December 2, 1966, and entailed construction of a concrete foundation, outside frame walls, interior separation walls, installation of floors, ceilings doors and windows, plus application of sheet rock to interior walls and painting. The Carrier not only concedes that such work was performed by outside forces but even augments it by including heating, electrical, plumbing and roofing work.

In alleging a violation, the Organization bases its claim primarily on the Scope Rule and Rule 46 of the effective Agreement. In addition, it also cites Rules 1, 2, 3, 4 and 5. The Carrier, on the other hand, predicates its defense on a number of grounds. Foremost is the contention that the work performed by outside forces is not exclusively reserved to Claimants, either by the schedule rules or past practice. Inasmuch as the scope rule does not delineate work, it has been the tradition, historical practice and custom on this property not to reserve such work to the employees herein, but to have it performed on a contract basis. In this regard, a long list of specific instances are cited to support this past practice, whereby the Carrier has contracted out such work with full knowledge by the Organization.

This issue is not a new one between these parties. During the period from 1945 through 1966, at least 22 projects are cited which were contracted out by the Carrier. As a matter of fact, numerous disputes involving the same parties and concerning similar issues have been decided by this Board in favor of the Carrier. See Awards 11243, 11374, 12012, 15895, 15465, 15608, 15632, 15539, 16026, and others.

In this posture, we believe that precedent requires us to follow such awards, unless they are palpably wrong or unconscionable. In the context of the issue before us and the circumstances evidenced therein, we cannot ascribe error to the Carrier's action.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees 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

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 31st day of July 1969.