



Award Number 17598

Docket Number MW-18264

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Don Gladden, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
CHICAGO AND WESTERN INDIANA RAILROAD COMPANY**

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

- (1) The Carrier violated the Agreement when it assigned the work of preparing the floor and laying tile in the hallway of the second floor of the Dearborn Street Station and also in Room 228 to outside forces.
- (2) Carpenters H. Buwalda and F. Gaydich each be allowed seventy (70) hours' pay at their straight time rates because of the violation referred to within Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: The facts pertinent to this dispute are clearly set forth within the following quoted correspondence which represents all of the correspondence relative to this dispute exchanged by the parties during the handling on the property.

"October 10, 1967

Mr. F. W. Zabrockas
B&B Supervisor
Chicago & Western Indiana RR
47 West Polk Street
Chicago, Illinois 60605

Dear Sir:

I am hereby presenting claim in behalf of Carpenters H. Buwalda, (Work Number 2572) and F. Gaydeck (Work Number 2468) for seventy (70) hours' pay each at their straight time rates of pay because an outside contractor (F. H. Leinweber) was used to prepare the floor and to lay tile in the hallway of the second floor of the Dearborn Street Station and also in Room 228. I should advise that, sometime ago, I entered into an agreement with the Chief Engineer at that time (Mr. Hillman), which permitted a contractor to install some flooring, with the understanding that two of our B&B forces would be used as assistants and observers in order to become proficient in performing work of this type. Each of the claimant employees are well qualified to perform work

The Agreement in effect between the two parties to this dispute dated April 15, 1940, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: In 1956 approximately 80% of the flooring on the second floor of Carrier's Dearborn Passenger Terminal Offices was rehabilitated by the application of permafex underlayment and the installation of floor tile. This work was performed under contract with an outside concern without claim or protest from the Maintenance of Way Organization.

Beginning August 3, 1967, the flooring in the remainder of the hallway and one office was rehabilitated, using the same methods and materials under contract with an outside concern.

Under date of October 10, 1967, General Chairman Caputo filed claim with B & B Supervisor Zabrockas covering this most recent work.

The original claim and other correspondence exchanged between the parties during handling of the dispute on the property, identified as Carrier's Exhibits "A" through "F", are attached hereto and made a part hereof.

The following, quoted in full is the scope rule of the controlling agreement between the carrier and the Brotherhood of Maintenance of Way Employees:

The rules contained herein shall govern the hours of service and working conditions of the following employees in the Maintenance of Way and Structures Department.

TRACK DEPARTMENT

Section and Extra Gang Foremen
Assistant Section and Extra Gang Foremen
Section and Extra Gang Laborers
Track Welders and Helpers

BRIDGE AND BUILDING DEPARTMENT

Carpenter Foremen
Carpenter Leaders
Carpenters and Helpers
Building Repairmen
Gate Repairmen
Plasterers and Helpers
Mason Foremen
Painter Foremen
Painter Leaders
Painters
Sign Painters
Paperhangers
Bridge and Building Laborers
Motor Car Operators and Helpers

(Exhibits Not Reproduced)

OPINION OF BOARD: The question presented to the Board in this case is whether or not the claimants were qualified to perform the work assigned to an outside contractor.

The Carrier contends that certain skills were required in connection with "preparing the floor" as distinguished from laying tile and contends that a special process and material was used which required skilled labor and that the men submitting the claims were not qualified to perform this type of work.

The general rule of this Board was stated in Award No. 7805 and quoted in Award No. 11862 as follows:

"It has been said on many prior occasions that, generally, a Carrier may not contract with others for the performance of work embraced within the scope rule of a collective agreement. See, for example, Awards 3823, 5237, 4158 and 5151. Exceptions to this general rule have been recognized. . . . for example . . . where special skills not normally found in the Carrier's were needed. . ."

The record reflects that Bridge and Building employees did not have the necessary skills in 1954 to perform the type work in question and while there may have been correspondence between the parties relative to training Carrier's employees to learn the skills necessary to perform this type work, there is no showing that the claimants were so trained nor is there evidence that they have experience in connection with the application of this special process and material used in preparing the floor.

It cannot be successfully maintained, on the state of the record before us, that Carrier's contentions are without merit.

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 Employee 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 25th day of November 1969.