NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 19552
THIRD DIVISION Docket Number MW-19402

William M. Edgett, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Kansas City Terminal Railway 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 repairing the roof of the Union Station to outside forces (System File KCT-2/MW-5.70.180).

(2) Messrs. J. L. Stewart, W. T. Husher, M. H. Rahija, A. W. McGhee, J. M. Dickson, J. E. Weis, B. W. Carlson and R. E. Sovern 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.

OPINION OF BOARD: Carrier assigned the repair of the roof of Union Station to outside forces. The employees contend that this action violated Rule 1 - Scope, and Rule 2 - Classification of Work.

Rule 2 reads:

"RULE 2 - CLASSIFICATION OF WORK

* * * * *

BRIDGE AND BUILDING DEPARTMENT

Group 5: Except as may be covered by the Union Station Maintainers' Agreement, the construction, repairing, maintenance or dismantling of buildings or other structures, the erection of fencing, gates, right-of-way monuments and signs, the installation of wood or concrete crossings, walks and platforms shall be classified as Bridge and Building work.

* * * * *"

The Union Station Maintainer's Agreement excludes "Roofing of Buildings." Thus, by express agreement, the work performed by the outside forces was within the coverage of the Agreement Carrier has entered into with the MofW employees.

Carrier says that it was proper to contract out the work because it has been doing so for a period of fifty seven years. Carrier also raises, as a secondary issue, the question of whether claimants are entitled to monetary damages.

Claimants hold regular positions and were fully employed during the period in which the work was performed.

It is generally recognized that Carrier may not contract with outside forces to perform work which is reserved to its employees by the Agreement. This rule is subject to exceptions which are not material here. No discussion was held with the General Chairman prior to the contracting out of the work in question, in spite of the fact that such discussion was made mandatory by Article IV of the National Agreement which was in effect at the time.

Carrier's defense, based on practice, is not persuasive under the facts of this case. Decisions of the Board have held that long standing practice conclusively demonstrates that the parties have mutually recognized that the Agreement did not prevent Carrier from using outside forces. Cases reaching that result generally find, then, a conclusive presumption that the work is outside the scope of the agreement in the fact that contracting out has continued for a long period of time.

Other Board decisions have held that when the Agreement is clear and unambiguous, practice cannot prevent the Organization from insisting on compliance with its terms. For example in Award No. 14599, (Ives), which did not deal with contracting out but is illustrative of the principle, the Board said:

> "The precedents cited by Carrier in support of its position do not preclude Petitioner's right to insist herein upon compliance with the clearly unambiguous provisions of the controlling Agreement between the parties. The provisions of an Agreement, when clear and unambiguous, shall prevail over conflicting practices."

The Agreement provisions are clear and unambiguous. The Board finds that, in the factual situation here, the principle expressed in Award No. 14599 is applicable, and the practice relied upon by Carrier does not bar the Organization from insisting on compliance with the Agreement.

The Board finds that Carrier violated the Agreement when it contracted with outside forces to repair the roof of Union Station; work which was reserved to Claimants by the Agreement. This resulted in a clear loss of work opportunity to Claimants and for this loss the Board may, and should, provide a remedy.

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 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

That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 10th day of January 1973.