

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21470
Docket Number MW-20996

Lloyd H. Bailer, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Chicago and North Western Transportation Company

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

(1) The Carrier violated the Agreement when it assigned outside forces to construct a yard office and welfare building at Shakopee, Minnesota (System File 81-19-81).

(2) B&B Foreman T. Anderson, Carpenter F. L. Timmers and furloughed Carpenter K. J. Weber each be allowed pay at their respective rates for an equal proportionate share of the total number of hours expended by outside forces beginning sixty (60) days retroactive from May 29, 1973 in performing the work described in Part (1).

OPINION OF BOARD: In compliance with Article IV of the May 17, 1968 National Agreement, by letter dated March 8, 1973 Carrier gave the Organization's appropriate General Chairman the prescribed notice of intention to contract out the construction of a yard office and welfare building at Valley Yard, Shakopee, Minnesota--which is on the property of the former Chicago, Saint Paul, Minneapolis and Omaha Railway Company (hereinafter called Omaha Ry. Co.). The parties conferred about the matter, were unable to reach an understanding, and Carrier proceeded to contract out the subject work. By letter dated May 29, 1973 the General Chairman initiated the instant claim contending Carrier violated the Schedule Agreement covering the property of the former Omaha Ry. Co. by contracting out the disputed work.

Contrary to the Organization's contention, the fact that Carrier complied with the notice requirement of Article IV of the May 17, 1968 National Agreement did not constitute recognition that performance of the subject work was exclusively reserved to employes covered by the Schedule Agreement. Said provision states: "Nothing in this Article IV shall affect the existing rights of either party in connection with contracting out."

Since the scope rule of the applicable Schedule Agreement is general in nature, we must look to custom and practice to ascertain whether the work in question is exclusively reserved to employes covered by this Agreement. The Organization cites several instances in which forces covered by the Agreement have built various structures on the involved property, and Carrier acknowledges that these forces have been used for such work. On the other hand, Carrier cites three specific instances in

which construction of structures on the former Omaha Ry. Co. property was contracted out. The Organization replies that such listing is not proof and, in any event, three instances do not make a practice.

We conclude the Organization has not met its burden to establish that by custom and practice work of the general character here involved has been reserved exclusively to employes covered by the subject Agreement. The claim therefore will be denied.

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1977.