

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **21482**
Docket Number **MW-21311**

James C. **McBrearty**, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(The Washington **Terminal Company**)

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

(1) The **Carrier** violated the **Agreement** when, without an agreement in writing between the Manager and the General Chairman as required by paragraph (c) of the **Scope** rule, it contracted out the work of painting the 'West Basement' of the depot at Washington, D. C. on March **23** and **24**, 1974 (System File **MW-74-2**).

(2) Painters C. **Ellsmore** and L. H. **Howard** each be allowed pay at their respective time and one-half rate for an equal proportionate share of the total number of man-hours consumed in performing the work referred to in part (1) hereof.

OPINION OF BOARD: The basic facts in this case **are** not in dispute. On Monday, March **18**, 1974, Carrier assigned Claimant C. **Ellsmore**, B&B Painter, to the task of painting the **walls** in an area of Carrier's Terminal between the Amtrak Commissary and the Southern Railway **Commissary**. On Tuesday, March **19**, 1974, Claimant **Ellsmore** was taken off this assignment because of a lack of material to complete it. Subsequently, on Saturday and Sunday, March **23** and **24**, 1974, which were the assigned days off of both claimants, outside contract painters completed the painting project which had been **begun** by Claimant **Ellsmore**.

A claim was initiated on behalf of B&B Painters **Ellsmore** and **Howard** for payment at the time and one-half rate for an amount of time equal to the number of man-hours consumed by the contract painters. In the handling of the case on the property, Petitioner alleged that **24** man-hours were consumed by the contract painters. Carrier neither affirmed nor denied this contention.

The claim is premised on the specific language of the Scope Rule which provides in pertinent part that:

Work covered by this Agreement shall not be contracted except by Agreement, in writing, between the Manager and General Chairman, except in emergencies.

There is no contention by either party that an emergency existed. There is no contention by either party which denies that the work **in** question is "covered by this Agreement." Rather, Carrier defends their denial of this claim on the basis that they knew nothing of the employment of contract painters inasmuch as the contract was made by Amtrak without Carrier's knowledge or concurrence.

Based on the factual situation **which** exists in this particular **case**, and without extending this decision to any other similar condition, it is our conclusion that Carrier has a liability which it cannot avoid by the defenses employed herein. **However**, the liability does not extend to both of the named claimants. As previously noted, Claimant **Ellsmore** was used to begin the work. If he had not **run** out of material on Tuesday, March 19, 1974, it is reasonable to **conclude** that he would have completed the assignment within his normal work week. Therefore, **Claimant Ellsmore** should be **allowed** payment of twenty-four (24) hours at the pro rata rate of pay. The claim on behalf of Claimant Howard is 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;

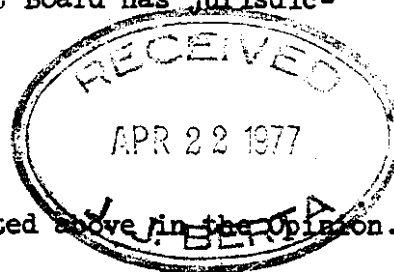
That the Carrier and the **Employees** involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

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

That the Agreement **was** violated.

A W A R D

Claim sustained to the extent **indicated above in the Opinion.**



NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Pauls
Executive Secretary

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