

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21655
Docket Number MW-21616

David C. Randles, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**
(Burlington Northern Inc.

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

(1) The Agreement was violated when outside forces were used to dismantle and replace the Carrier's lodging facility at **Wishram**, Washington (System File P-P-213C/MW-84(c) 1/24/75).

(2) The Agreement was further violated when the Carrier did not give the General Chairman prior written notification of its plan to assign said work to outside forces.

(3) Because of the aforesaid violations:

(a) Water Service employees H. H. King, J. T. Lingo, E. L. **McCallister** and O. Lein each be allowed eighty (80) hours of pay; Bridge and Building employees R. L. **Clugston**, T. G. Kirk, T. G. Wood, M. M. Harris, R. L. Williams and J. D. Anderson each be allowed one hundred eighty (180) hours of pay; Machine Operator R. L. **Archuletta** be allowed one hundred sixty (160) hours of pay, each at their respective straight-time rates for claim dates to December 6, 1974

and

(b) Each of the aforesaid claimants shall **further** be allowed pay at their respective straight-time rates for an equal proportionate share of the man-hours expended by said outside forces in performing such work accruing to their respective classes on and subsequent to **December 6, 1974**.

OPINION OF BOARD: Claim is that **Carrier** violated the Agreement when outside forces were used to dismantle and reconstruct a fire ravaged building, a lodging facility, at **Wishram**, Washington, and that the Agreement was further violated when the General Chairman **was** not given prior written notice of the intent of the Carrier to assign said work to outside forces. The Organization seeks a remedy which would allow payment for employees so affected by said violation.

The Organization contends that the work performed was within the scope of the Agreement as required by the Note to Rule 55 and thus should have been assigned to the affected **employees**. The Organization **further** asserts that the work which was done and the circumstances thereof did not fall within the exceptions contained in Note to Rule 55, nor did the Carrier provide notice to the General Chairman as required by said Note.

Carrier leased the land to Railway-inns, Inc.. The provisions of the lease required Railway-Inns to remove the remains of the fire ravaged building, construct and operate a lodging facility thereon which would be owned by said Railway-Inns.

The claim of the Organization appears to be based upon the fact that Carrier had **full** responsibility for the development of the property. If the Carrier had not leased the property and invested in the lease, ownership of the facility that was erected by said lessee, then the work would have fallen within the scope of the Agreement; but, in fact, the land was leased to Railway-Inns by Agreement entered into on the 15th day of June, 1974.

The Note to Rule 55A upon which the claim is based speaks of work performed on property located on and used in the operation of the Carrier or controlled by the Carrier. The ownership of the building **passed** from the Carrier ; therefore, the work thereon was *not* within the scope **of** the Agreement. Award 19803 (**Blackwell**) denied a similar claim as follows: "We shall therefore deny the Claim on the basis of prior Awards which hold that, where ownership of a building passes from **the** Carrier, the work thereon was no longer comprehended by the Agreement."

The **claim** shall be denied on the basis of prior awards and that a change in ownership ends the **employees'** rights to protected work.

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.

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The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 18th day of August 1977.

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THIRD DIVISION

<u>Award No.</u>	<u>Docket No.</u>
21743	CL-21655
21744	CL-21719

PARTIES TO DISPUTE: ((Brotherhood of Railway, Airline and Steamship
(Clerks, Freight Handlers, Express and Station
(Employees
(Norfolk and Western Railway Company

STATEMENT OF CLAIM: As shown **in** the respective dockets and not repeated herein.

FINDINGS: The Third Division of the Adjustment Board finds:

That the disputes were certified to the Third Division of the Adjustment Board **ex** parte by the complainant party; and

Under date of September 27, 1977, the parties jointly addressed a formal communication to the Executive Secretary of the Third Division requesting formal withdrawal of these cases from further consideration by the Division, which request is hereby granted.

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Cases dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 14th day of October, 1977.