

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22274
Docket Number MW-22148

Nathan Lipson, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**
(Seaboard Coast Line Railroad Company

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

(1) The Carrier violated the Agreement **when**, without a conference having been held between the Assistant Vice President, Engineering and Maintenance of Way and the **General** Chairman as required by Rule 2, it assigned or otherwise permitted outside forces to perform painting work on its depot and related structures at **Kissimmee**, Florida on December 9, 10 and 11, 1975 /System File 12-2 (76-15) J3/C-4(10)-Tampa Div.-27.

(2) **Because** of the aforesaid violation, each **B&B** employe furloughed on the claim dates in Group A on the Jacksonville and Tampa Divisions Seniority Districts be allowed pay at their respective pro-rata rates for an **equal proportionate** share of the total number of man-hours expended by outside forces in performing the work referred to in Part (1) hereof."

OPINION OF BOARD: As part of the nation's Bi-Centennial celebration the Chamber of Commerce of **Kissimmee**, Florida, contacted the carrier seeking permission to paint the depot at **Kissimmee** red, white and blue. The Chamber of **Commerce** intended to provide the paint and labor by using **"volunteer" labor** from the state prison farm. The Carrier granted the Chamber permission to do the work. The Carrier states the work done represented an aggregate of 72 hours.

The **Employees** contend that the Carrier's action clearly violated **Rule 2** which reads as follows:

"This Agreement requires that all maintenance work in the Maintenance of Way and Structures Department is to **be** performed by employees **subject to this** Agreement

"except it is recognized that, in specific instances, certain work that is to be performed requires special skills not possessed by the employees and **the use** of specialequipment not owned by or available to the Carrier. In such instances, the **Assistant Vice-President**, Engineering and Maintenance of Way, and the General Chairman will confer and **reach** an understanding setting forth the **conditions** under which the work will be performed,

"It is further understood and agreed that although it is not the intention of the Company to contract construction work in the Maintenance of **Way** and Structures Department **when** Company forces and equipment are adequate and available, it is recognized that, under certain circumstances, contracting of such **work may** be necessary. In such instances, the Assistant Vice-President, Engineering and Maintenance of Way, and the General Chairman will confer and reach an understanding setting forth the conditions under which the work will be performed. In such instances, consideration will be **given** by the Assistant **Vice-President**, Engineering and Maintenance of Way, and the General Chairman to performing by contract the grading, drainage and certain other Structures Department work of magnitude or requiring special skills not possessed by the employees, and the use of special equipment not owned by or available to the Carrier and to performing track work and other Structures Department work with Company forces."

The Carrier defends their action on two fronts. They argue that their granting permission to the Chamber of **Commerce** was not in the nature of a contract and was not within the meaning of "contracting" as used in Rule 2. Secondly, they argue that the Chamber's painting of the depot was only beautification or decoration and not "maintenance work" within the meaning of Rule 2.

We feel compelled to reject both arguments. To say that decoration or beautification of this nature is not maintenance is to draw a distinction without a difference, This painting obviously had

to add to the longevity of at least the building's surface. Similarly, it is equally meaningless to **say that** an agreement, verbal or otherwise, to have work of this type performed is not **"contracting"**.

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.

NATIONAL RAILROAD **ADJUSTMENT** BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this **12th** day of January **1979**.