

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23102
Docket Number MW-22865

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employees
(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

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

(1) The Carrier violated the Agreement when outside forces were used to

(a) perform remodeling work in connection with the construction of a Roller Bearing Reclamation Room in Building CD-9 at Milwaukee, Wisconsin and to

(b) paint the interior of said Roller Bearing Reclamation Room.

(System Files C#112/D-2096, C#122/D-2096, C#134/D-2121 and C#133/D-2110).

(2) The claimants* each be allowed pay at their respective straight time rates for an equal proportionate share of the three hundred ninety-seven (397) man-hours expended by outside forces in the performance of the work referred to in Part (1) (a) hereof and for an equal proportionate share of the one hundred thirty-four (134) man-hours expended by outside forces in the performance of the work referred to in Part (1) (b) hereof.

*The claimants are:

G. Rell	A. C. Sandberg
J. Ruhland	G. Pscheidt
M. Machalk	D. Bowman
D. Bode	? . Ziarkowski
A. C. Schulz	E. W. Phillips
J. L. Peloza	J. W. Keller
G. L. Wieting	K. W. Wein
	W. J. Weber

The Carrier has declined this claim."

OPINION OF BOARD: The Employees contend that the Carrier contracted out certain remodeling and painting work in connection with the construction of a Roller Bearing Reclamation Room. In its contentions, the Employees assert that the work consisted of erecting concrete block partitions, removing windows and doors, closing openings, installing suspended ceilings, painting and related work; which work required 431 man-hours to complete.

The Organization insists that said work is within the purview of the existing Agreement, and in this regard it cites pertinent portions of Rule 46:

"(d) An employe assigned to constructing, repairing, maintaining or dismantling bridges, buildings or other structures (except the work referred to in section (c) of this rule), or who is assigned to perform miscellaneous mechanic's work of this nature, will be designated as a bridge and building carpenter and/or mechanic.

(e) An employe assigned to cleaning or preparing incidental to mixing, blending, sizing and applying paint, calcimine or other wood preservatives either by brush, spray or other methods, or glazing, will be designated as a painter."

In addition, the Carrier gave notice under Article IV of the May 17, 1968 National Agreement of plans to subcontract which, the Organization asserts, is evidence that the work properly belonged to the Employees.

Finally, the Employees insist that any allegation that *they were not qualified and available to perform the work is a matter which must be proved - and not merely alleged - by the Carrier.

The Carrier concedes that notice of intent to subcontract was given, but it points out that the work to be performed involved concrete block partition walls and various other items including lighting, air conditioning, heating, etc., as well as various steel work which involved an entire construction project obviously including many crafts beyond the capability of the Employees involved. Thus, under the circumstances, the Carrier takes the position that it has the right to contract an entire project when its forces are not sufficiently qualified to perform all phases of the required project. Stated differently, the Carrier asserts that it is not necessary for it to fragment a project or to segregate certain work. In this regard, it cites Third Division Award 20639.

It is also noted - by Carrier - that the work involved which is made the subject of the claim presented, was only a small portion of the entire construction project; which further emphasizes the fact that it is unnecessary to fragment the work so as to accommodate the Employees.

Without, in any manner, diminishing the skills of the Employees who have presented this claim, the Board is of the view that the Carrier has raised a valid defense to the bulk of the claim, when it pointed out on the property that it did not have ".....sufficiently qualified personnel to perform all phases Of the over-all project which required the combined and/or coordinated services of qualified personnel of various crafts to properly progress the construction . . ." The portion of Rule 46 relied upon by the Carrier refers to constructing, etc., structures as a "bridge and building carpenter and/or mechanic." The implication of that language being that the Employee had certain basic skills, however we do not find any refutation on the property of the assertions made by the Carrier as to the necessity to integrate many portions of the project and thus, it would appear that Rule 46, as cited by the Employees, is not the type of rule which would preclude the integrated services necessary to construct a room such as is tier consideration.

However, we have noted that the portion of the Agreement dealing with painting is contained in a separate portion of Rule 46. It may be that under certain circumstances, painting is such an inter-related and integrated item of work that it could not reasonably be separated and performed by Carrier's employees. However, this record does not substantiate any such a potential defense. The record before this Board does not suggest that the Carrier could not have contracted the bulk of the work and still, without disturbing any inter-relationship of work, permit the Employees to perform the labor of painting.

Again, it is not our function to second-guess the Carrier in this regard, however, because the painting is in a separate provision of the rule, and because there is nothing in the record to suggest a necessity for inter-relation of the painting as there would have been for hanging doors on walls, etc., we are inclined to sustain that portion of the claim dealing with the painting of the interior of the Roller Bearing Reclamation Room, as set forth in Item (1) (b) of the Statement Of Claim. Accordingly, we sustain the monetary portion of Item 2 as it relates to painting involved.

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, 2s 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 as it relates to painting of the interior of the Roller Bearing Reclamation Room.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 15th day of December 1980.

