

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award **Number** 24716
Docket Number MW-24674

Edward L. **Suntrup**, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**
(Southern Pacific Transportation Company
(Western Lines)

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

(1) The Carrier violated the Agreement when it assigned outside **forces** to prepare and paint the interior of its Cookhouse at **Norden**, California on October 22, 22, 23, 24 and 25, 1980 (Carrier's File **MoFW** 152-908).

(2) The Carrier also violated Article IV of the May 17, 1968 National Agreement when it did not give the General Chairman advance written **notice** of its intention to contract said work.

(3) As a consequence of the aforesaid violations, B&B **employees** R. L. Cartright, N. H. Carl and R. M. **Michel** each be allowed forty (40) hours of pay at their respective straight time rates.

OPINION OF BOARD: This is a pay claim filed by the Organization on November 26, 1980 for the three (3) Claimants named in the Statement of Claim. The following facts in the instant case are not in dispute. Outside **forces** were **allowed** to paint the interior of a commissary building on October 21-25, 1980 inclusive, on the Carrier's **Norden**, California property which building was totally owned by the Carrier but which was leased in its entirety to a **corporation** by the name of Mile Post Inns. The **work** was done without notification to the **Organization** General Chairman. Facts at dispute are whether the work involved a total of one hundred and twenty (120) or sixty (60) hours on the days in question.

With respect to certain other information found in the record before this Board, it is well established that the National Railroad Adjustment Board will not consider materials which were not submitted by the parties during the handling of the claim on property. This firmly established doctrine, which is codified by Circular No. 1, has been articulated in numerous Awards, including Awards 20841, 21463 and 22054 of this Division. A review of the instant case shows materials present which were not presented on property. Such materials will not be considered by the Board.

The position of the Organization is that the work in question fell under both the Scope Rule of the current Agreement and that, in addition, Article IV violation of the National Agreement of May 17, 1968 was involved when no notification, prior to the subcontracting, was given to the General Chairman. In response to the claim, it is the position of the Carrier that it had no **contractual** obligation under the current Agreement with respect to the instant claim since the lease contract it had with the lessee provided **justification** for the actions when the interior painting to the cookhouse was done.

The validity of the Claim in the instant case depends specifically on the substance of the Carrier's lease Agreement with Mile Post Inns rather than on Board precedent cited by the Carrier which may refer to leasing arrangements between this Carrier and/or other Carriers and lessees which contain contractual provisions other than those here at bar. Although the Carrier did not provide the Organization with a signed and dated copy of the lease on property, it did provide, in its correspondence with the General Chairman on property, reference to the appropriate lease clauses here at stake. These clauses state that the lessee shall be liable for minor maintenance to the building, but that any repairs exceeding \$200 be reported to the Carrier "who would then provide railroad assistance to effectuate repairs" (Carrier Exhibit E, p.1). This would reasonably suggest that the Carrier use its own forces for repairs in excess of \$200. The justification for such an interpretation can be found in the actions of the Carrier itself when it assigned employees covered by the current Agreement to make necessary repairs to the roof and/or structure of the building. If the Carrier had done this, it follows a fortiori that current Agreement employees should have been used to effectuate any other repairs exceeding \$200.

As this Board has ruled in numerous discipline cases (Third Division Awards 21759, 22145 inter alia) and as it rules again here in this case dealing with contract interpretation, it is not in a position to make credibility findings and to resolve conflicts of evidence. It is the Carrier's contention that the time spent painting the cookhouse on the days in question was about sixty (60) hours. The Board can only presume that the Carrier was in a better position to know the time involved than the Claimants. It rules, therefore, that each of the three (31 Claimants be paid, at the pro rata rate, one third (1/3) of sixty (60) hours pay, or twenty (20) hours pay each.

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 in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: _____


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 9th day of March, 1984