

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25558  
Docket Number MW-25370

Frances Penn, Referee

(Brotherhood of Maintenance of Way **Employes**  
PARTIES TO DISPUTE: (  
(**The** Chesapeake and Ohio Railway Company

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

(1) The Carrier violated the Agreement when it failed and refused to assign a B&B Foreman to work with an outside concern engaged in constructing a foundation for a clearing press at Russell, Kentucky April 8, 1982 through June 22, 1982 (System File C-C-1337/MG-3564).

(2) Because of the aforesaid violation, the senior **B&B** Foreman assigned to the **Raceland** Car Shops at Russell, Kentucky during the claim period shall be allowed an additional eight (8) hours of pay at his straight time rate for each work day **during the** claim period.

OPINION OF BOARD: The Carrier contracted with an outside concern to construct a foundation for a 1600 ton clearing press in the car shop at Russell, Kentucky. The Carrier's letter of March 22, 1982, which notified the Organization of Carrier's intention to contract out this work stated, "Carrier has no alternative but to contract this work as **Maintenance-of-Way** forces are actively engaged in progressing important program work and are not available to complete this project in the time frame required. There will be no furloughed Machine Operators or B&B Mechanics on the seniority territory involved during the period the contractor is working on the **property.**" The Organization contends that under Rule 83(b) of the Agreement the Carrier was obligated to assign a B&B Foreman to supervise the performance of the construction of the foundation. Rule 83(b) reads:

\*(b) It is understood and agreed that maintenance work coming under the provisions of this agreement and which has heretofore customarily been performed by employees of the railway company, will not be let to contract if the railway company has available the necessary employees to do the work at the time the project is started, or can secure the necessary employees for doing the work by recalling cut-off employees holding seniority under this agreement . Cut-off employees on a seniority district who will go to other territories to prevent having to contract work hereunder will be considered upon notification in writing to the **Manager-Engineering** or other corresponding officer of the territory on which the particular employee holds seniority by that employee. This shall not preclude letting to contract the building of new lines, sidings, and yards; the extension of existing lines,

'sidings, and yards; the construction of new buildings or other facilities which has customarily been handled by contract in the past; or the doing of maintenance work requiring equipment which the railway company does not have or skill and tools not possessed by workmen covered by this agreement; on the other hand, the railway company will continue its policy of doing construction work with employees covered by this agreement when conditions permit.

Where maintenance work coming under the provisions of this agreement which has customarily been performed by employees of the railway company is let to contract, the railway company will place an extra force foreman in charge of the work if the contracted work is roadway or track work. If the contracted work is bridges and structures work, a B&B foreman will be assigned with the contract force if the job is such as would justify assignment of a foreman if the railway company were doing the work with its own forces. If the contracted bridges and structures work is such that a carpenter would be used if the work were being done with railway company forces, a carpenter will be assigned. If painting work is contracted, a foreman will be used."

The Organization submits that this work was customarily performed by B&B employees and submits a letter from an employee who states that similar work has been done by B&B employees in the past. The Organization maintains that it has the men available to do the work and the knowledge needed to do it. The Organization contends that the work which was contracted out was replacement of a foundation and was maintenance work, not "the construction of new buildings or other facilities which has customarily been handled by contract." The Carrier contends that the foundation was much larger than any ever built by B&B employees, that contractors had been used in the past to perform work of this nature without the assignment of a B&B foreman and that it has never been understood that B&B forces would be used exclusively in the pouring of foundations for shop equipment. The Carrier states that it contracted out this work so that it would be done under warranty and that the warranty was used by the Carrier. Furthermore, the Carrier contends that the senior foreman on whose behalf this claim was filed was gainfully employed during the period in question and suffered no wage loss.

After careful review of the entire record, the Board finds that the Organization has not substantiated its claim that the Carrier should have assigned a foreman to supervise the construction of the foundation. The letter presented by the Organization was from a single employee who states that B&B employees had replaced a foundation a year previously. This evidence does not rebut the Carrier's position that foundation work had been contracted out by the Carrier in the past without the assignment of a B&B foreman. The Organization has also failed to present evidence to show that there had ever been an understanding between the parties that B&B forces would be used exclusively in the pouring of foundations for shop equipment. (See Third Division Award No. 24471.1 Finally the Organization has presented

no evidence to show that the construction of the foundation was maintenance work and not new construction. The language of Rule 83(b) states plainly that the Carrier was not precluded from 'letting to contract the building of...new buildings or other facilities which has customarily been handled by contract in the past." Since the work was new construction, no foreman was required. For these reasons, the Board finds that the Agreement was not violated.

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 **Employes** involved in this dispute are respectively Carrier and Employ&s 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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 26th day of July 1985.