

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26224

Docket Number MW-26065

Gil Vernon, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way ~~Employees~~  
(National Railroad Passenger Corporation  
(Amtrak) - Northeast Corridor

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 ceilings and walls in ~~Room~~ 420 ~~complex~~ in 30th Street Station on November 24 and 29, 1982 (System File ~~NEC-BMWE-SD-588~~).

(2) Because of the aforesaid violation, Painter L. ~~Rossini~~ shall be allowed ~~twelve~~ (12) hours of pay at his straight time rate."

OPINION OF BOARD: There are ~~two~~ facts in this record which are not disputed. First, it is undisputed that on May 19, 1982, the Carrier gave the union notice of certain ~~work~~ they intended to subcontract, including the following:

"New roofing for the 3rd floor level ~~roof~~ and the main ~~roof~~ over the concourse to include pedestals for HVAC systems and flashing around ~~roof~~ openings."

Second, at same time during November or ~~December~~ 1982 the ~~Alper Roofing Company~~ scraped, ~~spackled~~ and painted the ceiling and walls of three ~~rooms~~ on the 4th floor of the Carrier's 30th Street Station.

The Organization claims that the painting ~~work~~ was necessary because of damage done by vandals and that the ~~work~~ was performed on November 24 and 29, 1982. Moreover, they claim no notice was given. The Carrier claims that the damage was ~~caused by an~~ improper installation of a ~~roof~~ drain by the roofing contractor (~~Alper~~) and was repaired by them under the warranty provisions of the contract on ~~December~~ 6, 1982. ~~Additionally,~~ they assert the Organization had notice of the warranty provisions. Last, the Parties are at ~~odds~~ whether the Organization ever provided the Carrier with a copy of a March 17, 1983, rejection of a denial.

These factual claims and counter claims are significant ~~because~~ neither Party while on the property did anything meaningful to substantiate their assertions. There is nothing in this record to ~~suggest~~ the Union offered anything to support the idea that vandals caused the ~~damage~~. On the other hand, the Carrier failed to put forth anything to show it was ~~caused by~~ improper ~~roof~~ repairs or even if it was that it was covered by a warranty provision. For instance, there is no copy of the contract with the roofing ~~company~~ in the record. ~~Nor~~ is a copy of the original notice in the record either.

Thus, neither Party has provided the evidence necessary to make an affirmative finding of fact to either sustain or deny the Claim based on their respective positions. Accordingly, in view of the irreconcilable state of the disputed facts ~~we are compelled to dismiss~~ the Claim.

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 facts are in dispute.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 15th day of January 1987.