

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

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

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

(1) The Agreement was violated when outside forces were used to perform remodeling work on the depot at Milwaukee, Wisconsin October 8 through December 7, 1984 (System Files C #22-84/D-2686, C #28-84/D-2686-B, C #29-84/2686-A and C #4-85/D-2686-C).

(2) As a consequence of the aforesaid violation:

(a) B&B Employees C. R. Bath, D. D. Bowman, R. C. Brown, L. J. Budahn, A. T. Clark, M. P. DeVries, J. B. Fehler, R. W. Hansen, Jr., G. Harris, Jr., G. J. Hubatch, J. T. Ingham, V. Jefferson, J. Jones, J. W. Keller, D. P. Knaak, J. E. Love, R. L. Morrow, G. A. Prell, R. W. Prestater, A. C. Schulz, R. C. Stankovsky, J. R. Wayer and D. M. Wild shall each be allowed an equal proportionate share of two hundred eighty-eight (288) man-hours (System File C #22-84/D-2686).

(b) B&B Employees C. R. Bath, D. D. Bowman, R. C. Brown, L. J. Budahn, A. T. Clark, M. P. DeVries, J. B. Fehler, R. W. Hansen, Jr., G. Harris, Jr., G. J. Hubatch, J. T. Ingham, V. Jefferson, J. Jones, J. W. Keller, D. P. Knaak, J. E. Love, R. L. Morrow, G. A. Prell, R. W. Prestater, A. C. Schulz, R. C. Stankovsky, J. R. Wayer, D. M. Wild and T. J. Rueda shall each be allowed an equal proportionate share of six hundred thirty-two (632) man-hours (System Files C #28-84/D-2686-B and C #29-84/2686-A).

(c) B&B Employees C. R. Bath, D. D. Bowman, R. C. Brown, L. J. Budahn, A. T. Clark, M. P. DeVries, J. B. Fehler, R. W. Hansen, Jr., G. Harris, Jr., G. J. Hubatch, J. T. Ingham, V. Jefferson, J. Jones, J. W. Keller, D. P. Knaak, J. E. Love, R. L. Morrow, G. A. Prell, R. W. Prestater, A. C. Schulz, R. C. Stankovsky, J. R. Wayer, D. M. Wild, T. J. Rueda, E. W. Finger, D. P. Lynch and K. K. Popp shall each be allowed an equal proportionate share of one hundred four (104) man-hours (System File C #4-85/D-2686-C)."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

This dispute arose when the Carrier contracted with an outside construction firm to work on remodeling a depot facility. The Organization contends that the work was within the scope of the Agreement and had been done by B&B forces in the past. It argues that the Carrier could have coordinated the work among the employees to complete the project.

The Carrier argues that the work was not within its jurisdiction, not a part of the scope of the Agreement and that it is not required to fragment the entire project so that various work could be done by the employees. It maintains that the employees did not have the combined or coordinated skills to complete the project and that part of the work required licensed plumbers and electricians.

A full review of the facts finds no issue raised on the property as to Carrier's proper notification of its intent to contract out. Said notification does not indicate whether the disputed work is under the scope of the Agreement or not (Third Division Awards 25370, 20920).

In this and similar contracting out cases the burden of proof rests firmly on the Carrier. Our review of the record finds that the Carrier has made a number of assertions. These include: the task was of great magnitude; that it required combined and coordinated skills of various crafts; the employees were not sufficiently skilled to complete the entire project; and, licensed plumbers and electricians were required.

The Organization has shown that some of the work was within the scope of the Agreement. It rebuts the Carrier's assertions in part. A careful reading indicates that it does not dispute that the project was of great magnitude or that it required the coordination of various crafts. The Organization did not refute the Carrier's assertion that licensed electricians and plumbers were required and that the Carrier had none on the property. The probative evidence establishes that contractors were used on two previous occasions in the depot performing "similar work" on the second and third floors. That stands unrefuted. In addition, the claims indicate that nearly two months' work was necessary to complete the project. This Board did not find that the Carrier had contracted the work to ten different firms, but to

one. The record shows that the Carrier contracted with Platt Construction to do the remodeling and that nine different firms were utilized by that firm to complete the work.

Overall, the Carrier has met its burden to establish that the project was of sufficient magnitude requiring unobtainable skills as to permit it to contract out the work. Although some portion of the work was within the scope of the Agreement, this Board cannot, on the basis of the facts, establish that the work was either entirely within the scope or of a large magnitude of the project. Organization's claims to various aspects of the work including "the installation of tile, staining doors, installing doors and base board moldings, installing door knobs and latches and lock sets," do not constitute sufficient evidence to evoke a sustaining Award. (Third Division Award 20785) Our review of the record does not find that a violation of the Agreement occurred in the instant circumstances (Third Division Award 26220).

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 2nd day of March 1989.