

The Third Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Duluth, Missabe and Iron Range Railway Company

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

(1) The Carrier violated the Agreement when it contracted with an outside concern to fabricate a platform for the turn table at the Proctor Roundhouse on June 12, 1985 (System File J-35-85).

(2) The Carrier also violated Supplement No. 3 when it did not give the General Chairman advance written notice of its intention to contract out said work.

(3) As a consequence of the aforesaid violations, B&B Welder W. Shoquist shall be allowed eighteen (18) hours of pay at his straight time rate."

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.

In 1982, the Carrier began a major rebuilding project of the turntable bridge at its Proctor Roundhouse. In June 1985, the Carrier purchased a 7' x 14' metal platform (which served as the cab deck of the turntable) from an outside contractor. Employees of the Carrier's Bridge and Building (B&B) Department then modified the platform to fit and installed it.

The Organization claims that the contracting out of the fabrication of the metal platform violated the Agreement since it contends that the fabrication, maintenance, erection, and replacement of parts of the turntable at this location "customarily, traditionally, and historically" have been assigned to the employees of the B&B Department. Prior to the instant dispute, the Carrier had reduced forces in the B&B Department. The Organization now claims 18 hours' pay for the senior furloughed welder as compensation for the alleged violation.

The Carrier maintains that the fabrication of component parts is not reserved to the B&B employees anywhere in the Agreement. In the past, the Carrier asserts, it has sometimes used B&B employees to fabricate parts and sometimes purchased pre-fabricated parts in a "ready-to-install" state. The Carrier comments that the Organization has never before claimed a violation when the Carrier purchased materials and parts from outside vendors.

The Organization contends that Rule 1 (Scope), Rule 2 (Seniority, including classifications), and Rule 26 (Classification of Work) clearly and unambiguously assign the type of work involved in this dispute to employees of the B&B Department. Since the language in the rules is specific, the Organization argues it does not have to demonstrate exclusivity to claim this work.

Supplement No. 3 to the Agreement, in pertinent part, provides:

"Contracting of Work

(a) The Railway Company will make every reasonable effort to perform all maintenance work in the Maintenance of Way and Structures Department with its own forces.

(b) Consistent with the skills available in the Bridge and Building Department and the equipment owned by the Company, the Railway Company will make every reasonable effort to hold to a minimum the amount of new construction work contracted.

(c) Except in emergency cases where the need for prompt action precludes following such procedure, whenever work is to be contracted, the Carrier shall so notify the General Chairman in writing, describe the work to be contracted, state the reason or reasons therefor, and afford the General Chairman the opportunity of discussing the matter in conference with Carrier representatives. . ."

The Carrier made no attempt to contact the General Chairman prior to contracting out the fabrication of the platform. Furthermore, the Carrier has never questioned the Claimant's ability and/or availability to perform this type of work. The Organization maintains that it is a well-established principle that work which is intended to be covered by the employees' Agreement may not be contracted out under normal circumstances, citing numerous Awards in support of this position. The Carrier's reason for contracting out this work, the Organization suggests, is that it felt it could be done more economically on the outside, and that is not relevant to this dispute.

The Carrier argues that Rule 26 is merely a classification rule designating workers solely for pay purposes. It does not reserve all identified types of work to the covered employees.

The purchase of a component part is not restricted by Supplement No. 3, the Carrier maintains. To establish the fabrication of component parts as "new construction" as contemplated by the Agreement, the Organization would have to demonstrate that employees have always fabricated parts or the Carrier has always notified the Organization before purchasing such parts. This the Organization has not done and cannot do, the Carrier states.

The Carrier identifies three comparable construction projects in the past 18 months where components were pre-fabricated, pre-cut, and pre-drilled by a supplier. The Carrier never served notice before purchasing these items, it avers, and the Organization never raised an objection. The Carrier maintains that it is free to purchase repair or replacement parts for installation by its employees.

We cannot accept the Organization's initial argument that Rules 1, 2, and 26 reserve all of the identified work to covered employees. If that were the case, there would be no need for Supplement No. 3, which severely limits the Carrier's right to contract out maintenance and construction work.

The fundamental issue to be decided, therefore, is whether the fabrication of the 7' x 14' metal platform constitutes either "maintenance work" or "new construction" as those terms are used in Supplement No. 3.

While we do not believe Rule 26 reserves all of the identified work to the covered employees, we look to Paragraphs (c) and (g) of that Rule for guidance as to the meaning of the phrases "maintenance work" and "new construction."

"(c) An employee assigned to construction, repair, maintenance or dismantling of buildings, bridges or other structures, including the building of concrete forms, erecting falsework, setting of columns, beams, girders, trusses, or in the general structural erection, replacement, maintaining, or dismantling of steel in bridges, buildings or other structures and in the performance of related bridge and building iron work, such as riveting, rivet heating, or who is assigned to miscellaneous mechanics' work, shall be classified as a bridge and building Carpenter and/or Repairman.

(g) An employee assigned to the operation of any welding device used in the performance of such work as *** Bridge welding and any other welding in the Maintenance of Way and Structures Department shall constitute a B&B Welder."

The thrust of these provisions is the erection, dismantling, and replacement of structures and the maintenance thereof. The language does not specifically include fabrication; neither does it specifically exclude it.

Therefore, we must consider past practice.

The Carrier has stated without contradiction that it has purchased pre-fabricated component parts many times in the past, and the B&B employees have installed these items. That is what occurred here. The Carrier also has stated without contradiction that the Organization has not claimed a violation for these actions in the past.

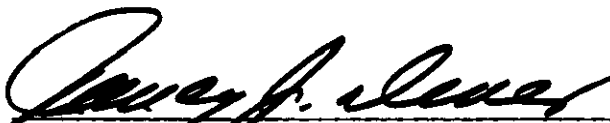
Therefore, we must assume that in the past, the parties have considered the purchase of pre-fabricated, made-to-order component parts as something other than "maintenance work" or "new construction." Consequently, the restrictions of Supplement No. 3 do not apply. No other provision of the Agreement has been presented which would preclude the purchase of component parts without prior notification to the Organization. No violation of the Agreement has occurred.

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 4th day of May 1989.