

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

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Denver and Rio Grande Western Railroad Company

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

(1) The Carrier violated the Agreement when it assigned or otherwise permitted outside forces to remodel the depot at Granby, Colorado beginning October 12, 1987 (System File D-87-23/MW-3-88).

(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 violations referred to in Parts (1) and/or (2) above, the furloughed Bridge and Building Subdepartment employees listed below shall each be allowed pay at their respective rates (straight time and overtime) for an equal proportionate share of the man-hours expended by the outside forces performing the work referred to in Part (1) above beginning October 12, 1987 and continuing until the violation is corrected.

J. G. Osborn	K. S. Gupton	R. L. Perna
P. M. Stefanich	J. E. Howell	K. W. Keith
J. K. Howard	F. C. Maestas	B. B. Gonzales
Ed Paxton	J. F. Rogers	G. E. Vasquez
P. M. Tamaska	G. L. Wiese	D. J. Maxwell
K. R. Protz	J. A. Brainard	H. J. Deputy
B. M. Gleason	J. M. Parr	M. Bornstein"

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.

The Organization alleges a violation of the Agreement wherein the Carrier contracted out the painting, hanging of doors and other remodeling of the Granby depot. The Organization argues that the work was reserved by numerous Rules to the employees and was contracted out without advance notice. The Organization further maintains that the work performed by the contractor beginning on October 12, 1987, denied the employees work which was their contractual right.

The Carrier denies that it contracted out work which belonged to the employees or violated any Rule of the Agreement. It argues that the remodeling of the depot at Granby, Colorado performed by the Rawhide Construction Company was at the bequest of Amtrak, which had leased the property. The Carrier argues that the outside contractor remodeled the facility by contract it had with Amtrak and over which the Carrier had no knowledge, authority or control.

Central to a resolution of this dispute is Section 4 of Lease No. 18265 which reads in pertinent part:

"Improvements--Lessee shall maintain all improvements whatsoever which on the date hereof exist upon the leased premises and it is agreed that Lessee may construct improvements upon the leased premises consistent with the purpose of this lease, provided always, however, that the style and type of construction shall be subject to approval by Lessor. All improvements on the leased premises including those which on the date hereof exist upon said premises and those hereafter constructed on said premises shall, during the continuance of this lease, be maintained and painted by the Lessee to the satisfaction of the Lessor, and at all times be kept by the Lessee in a state of good repair."

Clearly, the Lease provides the Lessee (Amtrak) the right to make improvements. The question to be resolved is whether the Carrier in these instant circumstances maintained control of the work or bypassed its obligations to its employees by circumvention in that work was performed directly benefiting the Carrier.

The Board finds the following factual basis for its decision. A lease did exist which permitted Amtrak to utilize and improve the Granby depot. The contract with Rawhide Construction Company was entered into by Amtrak and not by the Carrier. There is no direct evidence that the Carrier had any advance knowledge of the contracting out. There is no language in the Lease that provides the Carrier with control, only approval of "style and type of construction." While improvements remain with the Carrier, the work was not shown to be initiated or under the control of the Carrier. Nor does the record demonstrate how or in what manner, if any, the Carrier would have received any direct or indirect benefits from the improvements.

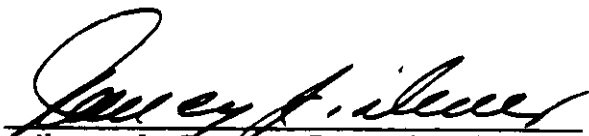
We have reviewed all other arguments and positions raised on the property. Similarly, the Awards provided by the parties have been carefully studied. In the facts and circumstances of this case, we fail to find sufficient probative evidence that the Carrier violated the Agreement. As the Carrier did not contract out the work and the Scope Rule does not apply to work over which the Carrier has no control, the Claim is denied (Third Division Awards 19253, 19639, 19957, 20280, 20529).

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of April 1991.