

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
(Union 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 painting work, i.e., preparation of surface, mixing, blending, sizing and applying of paint, on the first floor of the Headquarters Building at Omaha, Nebraska, beginning August 12, 1987 (System File M-643/871117).

(2) As a consequence of the afore-stated violation, Group 5 Bridge and Building Subdepartment Painter R. J. Cronican shall be allowed pay at his First Class Group 5 Painter rate for the number of man-hours expended by the outside forces performing the afore-described work beginning August 12, 1987 and continuing."

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 Carrier served notice by letter dated April 21, 1987, of its intent to remodel the Omaha Headquarters Building. In further correspondence, the Carrier maintained that the number of employees could not complete the work within the existing time constraints. The Organization disputed the right of the Carrier to contract out the work, arguing that the Carrier was violating Rule 52.

Rule 52 contains various conditions related to contracting out. Among these are the following provisions applicable to our decision:

"(a) By agreement ... work customarily performed by employees covered under this Agreement may be let to contractors ... only provided that ... [conditions listed].

(b) Nothing contained in this rule shall affect prior and existing rights and practices of either party in connection with contracting out....

(d) Nothing contained in this rule shall impair the Company's right to assign work not customarily performed by employees covered by this Agreement to outside contractors."

The Carrier argued on the property that the work performed by outside contractors was not work which was customarily performed by the employees as per Section (a) of the Rule. It argued that painting was not within the Scope of the Agreement and not work performed historically, customarily and exclusively by employees represented by the Organization. It further argued that painting had been historically contracted out and was therefore protected as a Carrier right by Sections (b) and (d) of the Rule. In regard to the last point, the Carrier provides evidence of record dating from 1924 that it has contracted out painting for more than sixty-four years.

The Scope Rule is a general Rule and the on-property record is conclusive that the work has not been "customarily" performed by employees. The letters submitted by B&B Painters do not refute the Carrier's evidence that it utilized outside forces for decades to perform work which included painting. The Organization's rebuttal on the property of the sixty-four year record, including the point that the Omaha Headquarters was painted by outside contractors only three times in that period, is not on point. It is central to this dispute that proof has been presented by the Carrier that outside forces historically painted buildings, including the Headquarters Building. This probative evidence removes this work from that which the Carrier is restricted from contracting out and is required to give advance notice. The fact that the Carrier gave advance notice is of no consequence as it was not required to do so in these circumstances.


We are forced to conclude from a review of over two hundred instances of contracting out painting, that the Carrier did not violate the Agreement. A careful review of all of the Organization's arguments and evidence fails to convincingly show language, practice, or facts to prove a Carrier violation. In the facts at bar the Carrier had the right to contract out the work of painting the Omaha Headquarters Building. We must deny the Claim (Third Division Awards 28610, 28850, 28558).

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Decker - Executive Secretary

Dated at Chicago, Illinois, this 28th day of October 1991.