Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 29300
THIRD DIVISION Docket No. MW-29297
92-3-90-3-199

The Third Division consisted of the regular members and in addition Referee Charlotte Gold when award was rendered.

PARTIES TO DISPUTE: (CSX Transportation, Inc. (formerly The Seaboard Coast Line Railroad Company)
(Brotherhood of Maintenance of Way Employes

STATEMENT OF CLAIM:

"(1) The Agreement was violated when the Carrier, without concurrence of the General Chairman, contracted renovation work to the second floor of the former Division Office at Jacksonville, Florida requiring skills and licenses not possessed by company forces. Carrier's file 12 (89-785), Organization's file CARP-89-30].

(2) As a consequence of the aforesaid violation, Carpenters F. Dodds, E. Dietz and L. Britt shall be paid an equal proportionate share of 1,472 man hours consumed by outside parties in addition to compensation already paid to them for work performed during the period claimed."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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.

At issue in this case is the renovation of the second floor of the Jacksonville Division Office Building. By letter dated January 24, 1989, Carrier notified the General Chairman of its intent to subcontract the renovation. At the time, Carrier forces were being used to perform the work and Carrier agrees that they were "pulled off" the job and replaced by workers employed by an outside contractor.

Carrier gave as its reasons for taking this action the fact that (1) it had narrow time constraints in which to complete the reconstruction and (2) the City of Jacksonville mandated that the work be done with licensed personnel. Carrier maintained that under applicable building codes, work over $25,000 must be classified as construction and not remodeling. Carrier thus was required to apply for building permits and have the work performed by licensed craftsmen. Carrier further alleged that it was forced to act when discussions with the Organization proved unfruitful and an understanding was not reached on how the work would be performed.

It strikes this Board as logical that a renovation job as large as the one contemplated here would require building permits and the use of licensed craftsmen under municipal building codes such as those present in Jacksonville. Nowhere in the record, however, is there any proof that that is the case. When asked to produce information concerning the required licenses, Carrier countered that it was the Organization's responsibility to verify the City of Jacksonville's licensing requirements, not the Carrier's.

In Rule 2, Contracting, of the Agreement, there is a strong presumption that, in general, maintenance work in the Maintenance of Way and Structures Department will be performed by employees covered by the Agreement. It is understood, however, that there are times when Carrier will find that the contracting of such work is necessary. Rule 2 goes on to cite several examples when that may be the case; for example, when special skills are required, special equipment is not owned by or available to the Carrier, or the work is "of magnitude." When the Carrier invokes these exceptions to the Rule, the burden shifts to it to prove that these special circumstances exist. The Carrier does not appear to have done so in this situation.

The suggestion that there were time constraints within which the Carrier was operating has greater merit. In its initial letter, the Carrier wrote:

> "We do not have the employees available to perform this work within the required time frame as we must have this area completed promptly in order to move dispatchers into this facility."

While this clearly could not be classified as an emergency situation, it is understood that a carrier has a right to have work performed within a reasonable period of time, so that it may conduct its day-to-day affairs. As it was, the work at issue here did not commence until April 25, 1989, and did not conclude until sometime after June 16, 1989. Claimants were fully employed at the time and thus it appears that the need to complete the work within a reasonable period was a valid concern.

The Organization cites as a violation of Rule 2 the fact that the Carrier failed to reach an understanding with the General Chairman as to how the work would be performed. Each party points to the other as being responsible for a breakdown in discussions. (The Organization objected to Carrier's contention in its Submission that the Organization had set certain preconditions for settlement, arguing that this was new material. The Board agrees that this information was not introduced on the property and thus it will not be considered.)

The record does indicate that the parties met and conferred on the issue. In its claim, the Organization spoke of a meeting on January 27, 1989, and subsequent meetings in which the matter was discussed. The Carrier also referred to a trip "to the location site of the proposed work where every detail of the project was explained" and that, afterwards, the General Chairman was allowed additional time in order to make his determination, "which was done later by telephone...."

We are unable to determine from the record where the responsibility lies for the failure to reach an understanding. We do not, however, read Rule 2 to mean that the Carrier may not enter into a subcontract after making a reasonable effort to reach an agreement. Were that to be the case, the overall intent of this subcontracting Rule would be undermined.

Under the facts of this case, it appears that the Carrier did have a contractually acceptable reason for electing to contract out the renovation, and that it made a reasonable effort to negotiate the matter. As a consequence, the claim must be denied.

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 24th day of July 1992.