

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 29539  
Docket No. MW-29721  
93-3-91-3-72

The Third Division consisted of the regular members and in addition Referee Thomas J. DiLauro when award was rendered.

PARTIES TO DISPUTE: ( (Brotherhood of Maintenance  
(of Way Employes  
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier used outside forces (Hughes Roofing) to replace the roof on the depot and Columbus, Nebraska on July 28 through and including August 21, 1989 (System File S-220/900009).

(2) As a consequence of the violation referred to in Part (1) hereof, B&B Foreman T. G. Bowley and B&B Carpenters R. Mason and W. J. Harris shall each be allowed an equal proportionate share of the three hundred twenty-nine (329) man-hours expended by the outside forces in question, at their respective rates of pay."

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 employe 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 the time this dispute arose, one Claimant had established and held seniority as a Bridge and Building (B&B) foreman and was regularly assigned and working as such. Also at the time this dispute arose, two Claimants had established and held seniority as B & B carpenters and were regularly assigned and working as such.

On July 28, through and including August 21, 1989, the Carrier contracted with an outside concern, Hughes Roofing Company, to perform roof replacement work on the depot at Columbus, Nebraska. Three employees of Hughes Roofing Company who held no seniority whatsoever with the Maintenance of Way Department, expended 329 man-hours performing this roofing work.

The Organization maintains that the Carrier violated the Agreement because it did not afford Claimants an opportunity to perform this roofing work in accordance with their Maintenance of Way Department seniority, and that Claimants were fully qualified and readily available to perform this work had the Carrier afforded them an opportunity to do so. The Organization asserts that this dispute involves bad faith on the part of the Carrier. The Organization contends the Carrier's actions in this matter represent an example of the Carrier's total disregard for its contractual obligation regarding the seniority district provisions of the Agreement, and its failure to live up to that obligation.

The Organization asserts that the Claimants suffered economically from the Carrier's action through loss of their equal proportionate share of 329 hours of pay at their respective rates. The Carrier contends roofing maintenance work was not within the Scope of the Agreement, and that the Organization has not made an affirmative showing that the Claimants experienced a loss of earnings.

The Organization alleges that Rule 52 of the Agreement allows the Carrier to contract out work customarily performed by employees covered under the Agreement provided the Carrier gives the General Chairman at least 15 days advance written notice of its plan to contract out the work and the reasons therefor. The Organization contends that on June 13, 1989, the Carrier notified the Organization that it planned to contract out the work of replacing the roof of the depot in Columbus, Nebraska, to which the Organization objected. The Organization asserts that per letter dated July 17, 1989, the General Chairman requested a conference to discuss the matter and refuted the Carrier's contention that the roofing work was not within the Scope of the Agreement, and that the Carrier nevertheless went forward with its plan to contract out the roofing work.

The Carrier argues that in light of the general Scope Rule, the Organization has failed to prove that customarily employees such as Claimants have exclusively performed such roofing work. The Carrier contends that per a Memorandum of Understanding dated November 18, 1943, it was vested with the right to contract out the

roofing work. The Carrier further maintains that all B&B Carpenters in the seniority district were employed at the time the roofing work was performed, thus the Claimants could not have been damaged.

The Organization asserts that Rule 8 of the Agreement reserves such roofing work to Carrier's B&B employes, and that such employees have customarily performed this work in the past. The Organization contends that the November 18, 1943 Memorandum of Understanding is subject to the limitations codified in Rule 52. The Organization further argues that the Carrier has failed to affirmatively prove that its B&B carpenters were not damaged.

The Carrier maintains that the roofing work was of an emergency nature and that it had insufficient manpower available to perform such work. The Carrier contends that it had a past practice of contracting out such building construction and repair work, and that the Organization has failed to establish that the roofing work in question was exclusively reserved to the Claimants.

The Organization argues that the roofing work was not of an emergency nature and that sufficient manpower was available among Carrier's employees to perform the work. The Organization refutes the Carrier's claim that it maintained any past practice of contracting out such building construction and repair work, and that the "exclusivity theory" is inapplicable to this dispute in light of Rules 1, 2, 3, 4, and 10 which encompass such roofing work and reserve it to the Carrier's B&B Subdepartment employes.

Both parties have cited several Awards to support their respective positions. After reviewing said awards, the Board finds Third Division Awards 27010 and 27011, which state that where notice of intent to contract out if a mixed past practice of contracting out similar work can be established, to be dispositive in this case.

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 9th day of March 1993.