

Form

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29544
Docket No. MW-29895
93-3-91-3-272

The Third Division consisted of the regular members and in addition Referee Hugh G. Duffy 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 an outside concern (McGill Painting Company, Inc.) to perform building maintenance work comprised of preparing the surface of and applying paint, stain, varnish and wallpaper to ceilings, walls, woodwork, columns and casings at the 5th Floor Lobby of the Carrier's Omaha Headquarters Building on January 16, 17, 18, 19, 22, 23, 24, 25 and 26, 1990 (System File S-265/900271).

(2) The Agreement was further violated when the Carrier did not give the General Chairman advance written notice of its intention to contract out the work described in Part (1) hereof in accordance with Rule 52.

(3) As a consequence of the violations referred to in Parts (1) and/or (2) above, B&B Painters W. J. Crawford and R. J. Cronican shall each be allowed forty-eight (48) hours' pay at the applicable First Class Painter's rate 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.

On June 19, 1989, the Carrier served notice of its intent to subcontract the painting of the fifth floor lobby of its headquarters building in Omaha, Nebraska. Following a conference held with the Organization on August 4, 1989, the Carrier proceeded with the project. The Organization contends that Carrier violated Rule 52 when it contracted out the work.

Rule 52 provides, in pertinent part, as follows:

"(a) By agreement between the Company and the General Chairman work customarily performed by employees covered under this Agreement may be let to contractors...[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 facts in this dispute are almost identical to those in Third Division Award 29037, which involved the painting of a different floor in the same building. There the Board held:

"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."

We find the reasoning in this Award to be compelling and must likewise deny the claim in the instant case.

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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 9th day of March 1993.