

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 29802
Docket No. MW-29468
93-3-90-3-394

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. 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 the Carrier used outside forces to perform roof repairs on the back dock of the Omaha Headquarters Annex on December 30, 1988 and January 3, 4, 6, 9, 10 and 11, 1989 (System File S-157/890163).
- (2) As a consequence of the violation referred to in Part (1) hereof, B&B Foreman D. Albin and B&B Carpenters J. Carlson, T. Danahy, W. R. Steer, E. Sorensen and M. Adler shall each be allowed an equal proportionate share of the total 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.

On December 7, 1988, the Carrier gave notice to the General Chairman of its plan to contract out work of repair and reroofing of a loading dock canopy. Thereafter, such contracted work was undertaken. The Organization contends that this is work

"customarily performed" by Maintenance of Way forces and that the work meets none of the exceptions in Rule 52 (a).

There is no doubt, as evidenced by statements provided by the Organization, that roofing work is frequently performed by Carrier forces. However, the Carrier contends and provides documentation to the effect that such work has also frequently been performed by outside contractors, as evidenced in 142 instances. This is one more instance where the existence of such mixed practice points to the application of Rule 52 (b), which reads in pertinent part as follows:

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

Among other Awards involving the same parties, this principle is supported by Third Division Award 28610.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:

Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 29th day of September 1993.