

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30100
Docket No. MW-29381
94-3-90-3-304

The Third Division consisted of the regular members and in addition Referee Charlotte Gold 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 apply a rubber membrane roof on the CTC Building at Salt Lake City, Utah, on March 20 through 23, 1989 (System File S-159/890384).
2. The Agreement was further violated when the Carrier did not give the General Chairman advance written notice of its intention to contract the work involved here, in accordance with Rule 52 and the December 11, 1981 Letter of Agreement.
3. As a consequence of the violations referred to in Parts (1) and/or (2) above, B&B Carpenters D.A. Holt and B.L. Holt shall each be allowed pay for twenty-eight (28) hours at their respective straight time 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 issue is the use of outside forces to apply a rubber membrane roof on the CTC Building in Salt Lake City, Utah, between March 20 and 23, 1989. The Organization alleges that the work accrues to it under various rules of the Agreement--Rule 1 (Scope),

2 (Department), 3 (Subdepartments), 4 (Seniority), 8 (Bridge and Building Subdepartment)--and that by contracting out the work, Carrier acted in bad faith, contrary to the mandate of the December 11, 1981, Letter of Agreement. Bad faith is further evidenced, it maintains, by Carrier's failure to provide proper notice to the General Chairman, in accordance with Rule 52. The Organization offers one hundred and thirteen written statements from B&B forces to prove that its members have customarily, historically, and traditionally performed building construction work of the same character.

Rule 52 reads as follows:

"RULE 52. CONTRACTING

- (a) By agreement between the Company and the General Chairman work customarily performed by employees covered under this Agreement may be let to contractors and be performed by contractors' forces. However, such work may only be contracted provided that special skills not possessed by the Company's employees, special equipment not owned by the Company, or special material available only when applied or installed through supplier, are required; or when work is such that the Company is not adequately equipped to handle the work, or when emergency time requirements exist which present undertakings not contemplated by the Agreement and beyond the capacity of the Company's forces. In the event the Company plans to contract out work because of one of the criteria described herein, it shall notify the General Chairman of the Organization in writing as far in advance of the date of the contracting transaction as is practicable and in any event not less than fifteen (15) days prior thereto, except in 'emergency time requirements' cases. If the General Chairman, or his representative, requests a meeting to discuss matters relating to the said contacting transaction, the designated representative of the Company shall promptly meet with him for that purpose. Said Company and Organization representative shall make a good faith attempt to reach an understanding concerning said contracting but if no understanding is reached the Company may nevertheless proceed with said contracting, and the Organization may file and progress claims in connection therewith.

- (b) Nothing contained in this rule shall affect prior and existing rights and practices of either party in connection with contracting out. Its purpose is to require the Carrier to give advance notice and if requested, to meet with the General Chairman or his representative to discuss and if possible reach an understanding in connection therewith.
- (c) Nothing contained in this rule requires that notice be given, conferences be held or agreement reached with the General Chairman regarding the use of contractors or use of other than maintenance of way employees in the performance of work in emergencies such as wrecks, washouts, fires, earthquakes, landslides and similar disasters.
- (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."

In response, Carrier has compiled a list of one hundred and thirty-four incidents of contracting out similar work. It also alleges, among other things, that it did give timely notice.

As in the past, this Board finds Rule 1 to be a general Scope Rule. As a consequence, the Organization bears the burden of demonstrating traditional and historic performance of the work in dispute. More than occasional performance is required to meet its burden here.

The Board is satisfied, based on the data provided by both the Organization and Carrier, that roofing work has been performed by members of the Organization, as opposed to members of any other craft on the property. This fact, however, does not bar Carrier from subcontracting such work if specific conditions are met. Rule 52 makes this clear when it states that the parties have agreed that even work customarily performed by employees may be let to contractors. This fact, as well as the strong mixed practice that exists here, performing the work with Carrier forces and subcontractors, lends credence to Carrier's argument that it has a right to subcontract such work.

In the instant case, the Board is satisfied that a sufficient need existed for the subcontracting work and that the letter of September 15, 1988, to the General Chairman met the requirements of Rule 52 for supplying adequate notice.

For all of these reasons, the claim must be denied.

Form 1
Page 4

Award No. 30100
Docket No. MW-29381
94-3-90-3-304

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin/lew
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 4th day of April 1994.