Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 30411
Docket No. MW-29817
94-3-91-3-172

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 Employes
(
(Elgin, Joliet and Eastern Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier assigned an outside concern (Arnold & Lowery) to perform tuckpointing work on the exterior masonry at the Joliet Storehouse building beginning on May 22, 1989 (System File BJ-14-89/UM-35-89).

(2) As a consequence of the violation in Part (1) hereof, Carpenters O. Salaiz and M. Clinton shall each be allowed compensation at their time and one-half overtime rates of pay for an equal proportionate share of the total number of man-hours expended by the outside concern."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

By letter dated March 9, 1989, the Carrier notified the General Chairman of its intention to contract out various items of work, including tuckpointing and masonry repairs at the Joliet Division storehouse. Following discussion, no agreement was reached as to this item, and the Carrier proceeded to contract out the work, which involved the assignment of one or two contractor's employees on May 24-26, 1989.

The Organization contends that work of this nature has been regularly and customarily performed by Maintenance of Way forces and that it should have been so assigned in this instance. There is no dispute that work of this nature has been performed by Maintenance of Way forces. Evidence introduced in the claim handling procedure indicates, however, that tuckpointing and masonry repairs have also been contracted out in the past in numerous instances. Thus, the issue is whether there is contractual support for the Carrier's right to contract out repairs such as here under review. Determinative here is Rule 6, which reads in pertinent part as follows:

"Rule 6 - Contracting Out Work

(a) Memorandum of Understanding (Supplement No. 1) with the shop crafts dated November 8, 1939 (printed here in part for ready reference):

'GENERAL

It is understood where reference is made in this understanding to fabrication of parts of iron, tin, sheet metal or other material or metals, that no such reference shall in any way prohibit the Railway Company from purchasing such parts from outside manufacturers, and that the right of the company to have repair work performed by outside contractors, agencies, etc., is not disturbed.'"

This is emphasized in Classification of Work Rules, Rule 2, Bridge and Building Sub-Department, which states:

"(j) All work described under Rule 2 shall be performed by employes of the B&B subdepartment, except . . . as provided by . . . Memorandum of Understanding (Supplement No. 1) dated November 18, 1939 . . . ."

Third Division Award 11103 concerned, as here, tuckpointing, and concluded that this was "repair work" and found as follows:

"The Board finds that the Memorandum of Understanding is valid and is in effect; that the wording of the Agreement and the wording of the Memorandum are both clear and that they are not indefinite or ambiguous and under such circumstances the plain meaning controls. There is a statement in the record that this is the first time the Carrier has asserted this defense but the record does not support this statement. Even if there had been a different mutual interpretation in the past either party to the Agreement could proceed to enforce the Agreement as made at any time. . . ."

The Organization contends that the Memorandum of Agreement refers in its entirety only to "fabrication" and cites Third Division Award 17224 in support of this. The Organization's quotation from Award 17224 does not provide the Board with assurance that the facts therein are sufficiently identical to those considered in Third Division Award 11103. Thus, the Board finds that Award 11103 is not unreasonable and provides applicable precedent here. There is no showing that the latter portion of Rule 6(a) does not mean what it clearly states, that is, the Carrier's reservation of rights as to repair work.

In reaching this conclusion, it should be noted that the Board does not find, as argued by the Carrier, that Rule 58 confining time claims to "actual pecuniary loss" would have been applicable here. In circumstances where other Rules (such as Rule 6) are not involved, the fact that Claimants are otherwise at work would not necessarily have made inappropriate the remedy sought here.

AWARD

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 8th day of August 1994.