

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31159
Docket No. MW-30643
95-3-92-3-412

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Consolidated Rail Corporation

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

- (1) The Agreement was violated when the Carrier assigned outside forces (Cathos Corporation) to perform Bridge and Building Subdepartment work (constructed a bungalow) at the Allentown Yard, Allentown, Pennsylvania on the New Jersey Division on September 17 and 18, 1990 (System Docket MW-1821).
- (2) The Agreement was further violated when the Carrier failed to give the General Chairman prior written notification of its intent to contract out said work to outside forces as required by the Scope Rule.
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, B&B Foreman K. Rothermel and B&B Mechanics D. Brulia and T. Murphy shall each be allowed sixteen (16) hours' pay at their respective straight time rates of pay for the time spent by the outside forces performing said work."

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.

This claim arose when the Carrier allegedly used three employees of Cathos Corporation to install a prefabricated steel structure to house an air compressor unit in the Allentown Consolidated Terminal on September 17 and 18, 1990. The Organization filed the instant claim alleging that the Claimants were fully capable and available to put up the structure. In addition, the Organization contended that the Carrier did not notify the General Chairman of its intent to contract out the work.

The Carrier denied the claim contending that this was a prefabricated structure and "the purchase price included delivery and installation". Furthermore, the Carrier contended that the Claimants prepared the area where the structure was to be erected and they were fully employed on the claim dates; therefore, they suffered no loss.

This Board has reviewed the extensive record in this case, and we must find that the Organization has not met its burden of proof that the Carrier engaged in subcontracting that violated the agreement.

The record reveals that the Carrier purchased a bungalow from the Cathos Corporation, which included installation. The Carrier's employees performed the preparation work for the installation of the bungalow, which included the excavation and installation of a concrete pad. The Carrier has shown that the work that was performed by the company from which they purchased the bungalow is the same type of work that has been performed by contractors and other crafts throughout the Carrier's system.

Although the Organization has correctly pointed out that the type of work that was performed by the Cathos Corporation was similar to the type of work performed by bargaining unit employees, this Board is not convinced that this was subcontracting of bargaining unit work which constituted a violation of the agreement.

AWARD

Claim denied.

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ORDER

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 26th day of September 1995.