

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31885
Docket No. MW-30380
97-3-92-3-113

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

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

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Company assigned outside forces (B. Schwartz Company) to perform Bridge and Building Subdepartment work (boarding up/installing plywood on windows and doors) at the Port Richmond Grain Storage Building from February 2 through 27, 1990 (System Docket MW-1479).
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with advance 'written notice of its intention to contract out said work' as required by the Scope Rule.
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants G. A. Golden, J. L. Royer, M. D. Tallarida, J. H. Love, J. V. Lucas, Jr., R. J. DiMatteo and D. J. Lauer shall each be allowed one hundred forty-four (144) hours' pay at their respective rates."

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 were given due notice of hearing thereon.

In 1990, the Carrier contracted with outside forces to have the windows and doors of a structure, abandoned for Carrier use since 1983, boarded up with plywood. The purpose, according to the Carrier, was "to secure the premises and restrict entry".

The Organization contends that work of this nature is performed by Bridge and Building Subdepartment employees and that the Carrier failed to provide notice to the General Chairman of the work proposed for contracting.

The building was on the Carrier's property and within its control. Nevertheless, there is no dispute that it has not served any purpose in terms of the Carrier's railroad operations for the previous seven years. The Board finds no basis to dispute the Organization's contention that work of this nature is, on occasion, performed by Maintenance of Way employees. Whether such work comes under the applicable Scope Rule, however, is debated by the parties. Here resolution of the Scope issue is not required. The Board concurs with the reasoning presented in Third Division Award 19994, although it is understood that a different Carrier and Article IV of the 1968 National Agreement are involved. That Award reads in pertinent part as follows:

"... We have held in a long line of awards that work on facilities owned by Carrier, but used for purposes other than the operation or maintenance of the railroad, do not come under the scope rule of the agreement (Awards 19639, 19253, 9602, 4783 and others). With respect to abandoned facilities we have ruled similarly. For example, in Award 12918 we said:

'Since the Agreements pertain to work of carrying on Carriers' business as a common carrier, we must conclude that the work of dismantling and removing completely the abandoned property does not fall within the contemplation of the parties. This work cannot be considered maintenance, repair or construction.'

* * *

We must conclude that work on abandoned facilities, even through Carrier retains ownership of the property, is not work contemplated by the

"parties to the Agreement and such work is not within the scope of the applicable schedule Agreement."

In sum, the application of plywood to an abandoned building (involving far less work than actual demolition or removal of such building) is not shown to be "inspection, construction, repair or maintenance" as generally contemplated in relation to railroad operations. As a result, advance notice to the General Chairman was not required, and performance of the work by a contractor was not prohibited under the Agreement.

AWARD

Claim denied.

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 4th day of March 1997.