

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35432
Docket No. MW-33016
01-3-96-3-411**

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin 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 (A.S.I.) to perform roof repairs to the tower roof on the Canal Draw Bridge located in Summit, Delaware beginning September 19, 1994 and continuing (System Docket MW-3814).
- (2) As a consequence of the violation referred to in Part (1) above, B&B Foreman J. L. Royer and B&B Mechanics M. D. Tallarida and C. E. Miller shall each be compensated for eight (8) hours' pay per day at their respective straight time rates beginning September 19, 1994 and continuing until the violation ceased.”

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.

The instant dispute presents Scope coverage issues arising out of the Carrier's decision to use an outside contractor to install a sprayed foam roofing materials on the tower in question. The Scope Rule involved refers to "... repair and maintenance of ... buildings and other structures ..." without explicitly reserving the work involved in the application of foam roofing materials. As such, the Scope Rule is general. The extent of its coverage, therefore, must be established by evidence.

General Scope Rules pose two distinctly different aspects of scope coverage in contracting disputes: Scope coverage for notice purposes and scope coverage for performance purposes. To establish scope coverage for notice purposes, the Organization need only demonstrate a minimal level of actual past performance of the kind of work involved. This is a relatively low evidentiary requirement. To establish scope coverage for reservation of work purposes, however, requires proof that the employees have customarily, historically and traditionally performed the work in the past. This standard imposes a significantly more substantial evidentiary requirement. Moreover, merely providing notice of plans to contract out work does not operate as an admission of scope coverage for reservation of work purposes.

On this record, the Carrier did provide notice by letter of May 31, 1994. It noted that the application of the material had to conform to manufacturers' specifications to obtain a live-year guarantee. The letter went on to assert that the employees were not qualified to perform the work and, further, that the Carrier did not possess the necessary equipment.

While the Organization's initial claim asserted that the employees had "... performed these very same duties ... in the past," it significantly retreated from this position in its February 14, 1995 appeal. It said there that M of E department employees, who are a different craft in the Carrier's Car Repair Shop facilities, had the same equipment and used it to insulate box cars and refrigerated cars. The Organization went on to state that if the M of E employees had become qualified, then the Carrier could "... just as easily train employees under the jurisdiction of the Brotherhood." In its final appeal on the property, the Organization made no assertion whatsoever that covered employees had performed the specific work at any time in the past.

Given the foregoing considerations, we are forced to conclude that there is no evidence the covered employees have performed foam roofing work at any time in the

past. On this record, therefore, our overall finding must be that the work in question was not reserved to the covered employees for performance. Accordingly, we find no violation of 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 26th day of April, 2001.