Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 36050
Docket No. MW-36190
02-3-00-3-387

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(National Railroad Passenger Corporation (Amtrak)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it assigned or otherwise allowed four (4) employees of an outside concern (Alps Construction Company) to perform general remodeling work, i.e., installing a stud wall, hanging drywall, taping, sanding and hanging doors in Room 332 on the third floor of the Carrier's Chicago Union Station on August 27, 28, 31, September 1, 2, 3 and 4, 1998 (Carrier's File BMWE-374 NRP).

(2) As a consequence of the violation described in Part(1) above and for their loss of work opportunity, B&B Foremen D. Mullenhoff and B&B Mechanics G. V. Butler, S. Toledo and E. F. Capintero shall each be allowed seventy (70) 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.

The issue raised in this case is whether the Carrier's contracting out of the demolition and construction of a new office at Chicago Union Station violated the Scope Rule of the Agreement. There is no dispute that the Carrier complied with its notice and conference obligations set forth in Rule 24, and that none of the B&B Mechanic work force located at Union Station (the Claimants) were furloughed as a result of this contracting.

The Organization argues that this remodeling work is scope-covered, traditionally performed by employees, and could have been accomplished by them on rest days or during overtime. It asserts that the contracting represents a loss of work opportunity for the Claimants, properly compensable by monetary relief, citing Third Division Awards 27614, 30181, 31966, 32128, 33631, 33850, 35936.

The Carrier contends that it complied with its Rule 24 contracting obligations, and that said Rule does not prohibit contracting so long as no employees are laid off as a result. It notes that the Claimants compose the entire B&B force at Chicago Union Station, perform ongoing maintenance functions, and were fully employed on the claim dates. The Carrier argues that the Organization failed to show that construction or rehabilitation work of this magnitude is scope-covered, as it has never been performed by these employees at this location in the past. It avers that it has always contracted this type of work due to the unavailability of its employees at this location to perform extensive construction work in conjunction with their normal maintenance functions. The Carrier also argues that no monetary relief is appropriate for the Claimants who were fully employed and, in one instance, on vacation.

A careful review of the record convinces the Board that the Organization failed to sustain its burden of proving that the construction and rehabilitation work in issue is scope-covered, as defined by Rule 1 on the property. That Rule protects "the work generally recognized as work ordinarily performed by the Brotherhood of Maintenance of Way Employes as it has been performed traditionally in the past in that territory." There is no dispute that, prior to the Carrier's takeover of Union Station in 1986, there was no BMWE force at that location, and that the Claimants compromise the entire BMWE force created by the Carrier to perform all maintenance functions at that location. The Organization did not rebut the Carrier's assertion on the property that the Claimants never engaged in construction work of this magnitude in the past, and

were unavailable for such projects due to the ongoing nature of their maintenance functions. Because the Carrier admittedly complied with its Rule 24 notice and conference obligations prior to contracting in this case, and no employees were furloughed as a result of said contracting, the Organization failed to establish that the Carrier violated the Agreement as alleged.

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 21st day of May, 2002.

LABOR MEMBER'S DISSENT
TO
AWARD 36050, DOCKET MW-36190
(Referee Newman)

The DISSENT is directed towards the Majority's erroneous finding that the work involved in this dispute was of such magnitude that it would preclude using the Claimants. The Board held:

> "*** The Organization did not rebut the Carrier's assertion on the property that the Claimants never engaged in construction work of this magnitude in the past, and were unavailable for such projects due to the ongoing nature of their maintenance functions. ***"

The problem with the findings cited above is that no mention of magnitude was made by the Carrier during the handling of this dispute on the property. Clearly, the framing of stud walls, hanging drywall, taping, sanding and hanging doors is basic B&B work and is not of such a magnitude that would preclude the assignment of the Claimants. For that reason, I dissent.

Respectfully submitted,

Roy C. Robinson
Labor Member