

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36234
Docket No. MW-36211
02-3-00-3-405

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

(Brotherhood of Maintenance of Way Employes
PARTIES TO DISPUTE: (
(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 six (6) employees of an outside concern (National Restoration Systems Company) to perform concrete repairs to the Mail and Express Platform at the Carrier's Chicago Union Station using a jackhammer, a cement saw, a bobcat and a forklift on December 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 21, 22 and 23, 1998 (Carrier's Files BMW-354, BMW-355 and BMW-356 NRP).
- (2) The Carrier violated the Agreement when it assigned or otherwise allowed six (6) employees of an outside concern (National Restoration Systems Company) to perform concrete repairs to the Mail and Express Platform at the Carrier's Chicago Union Station using a jackhammer, a cement saw, a bobcat and a forklift on December 28, 29, 30, 31, 1998, and January 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, February 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 22, 23, 24, 25, 26, March 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 22, 23, 24, 25, and 26, 1999 (Carrier's Files BMW-357, BMW-358, BMW-359, BMW-360, BMW-361, BMW-362, BMW-368, BMW-369, BMW-370 and BMW-373).
- (3) As a consequence of the violation described in Part (1) above and for their loss of work opportunity, Claimants D. Mullenhoff, S. Toledo, H. Carpentero, M. Gonzalo and R. Negrete shall each be

allowed one hundred four (104) hours' pay at their respective rates.

- (4) As a consequence of the violation described in Part (2) above and for their loss of work opportunity, Claimants D. Mullenhoff, S. Toledo, G. Butler, H. Carpentero, M. Gonzalo and R. Negrete shall each be allowed five hundred twelve (512) 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 major concrete repair work to the Mail Platforms 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 concrete repair work is scope-covered, traditionally performed by employees, and could have been accomplished by them on rest days, during overtime or by readjusting their work assignments. 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, 33631 and 33850.

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 work force at Chicago Union Station, perform ongoing maintenance functions, and were fully employed or unavailable on the claim dates. The Carrier argues that the Organization failed to show that concrete repair 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 work of this magnitude due to the unavailability of its employees at this location to perform extensive rehabilitation work in conjunction with their normal maintenance functions, the lack of managerial expertise, and the use of materials not normally used in the maintenance operation. The Carrier also argues that no monetary relief is appropriate for the Claimants who were fully employed or unavailable due to vacation or personal leave.

A careful review of the record convinces the Board that the Organization failed to sustain its burden of proving that the extensive concrete 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 Employees as it has been performed traditionally in the past in that territory." Prior to the Carrier's takeover of Union Station in 1986, there was no BMWE force at that location; the Claimants compromise the entire BMWE force created by the Carrier to perform all maintenance functions at that location. There is no dispute that the Claimants do perform some concrete repair work as part of their ongoing maintenance functions. However, the Organization did not rebut the Carrier's assertion on the property that the Claimants never engaged in concrete reconstruction work of this magnitude (135,000 square foot project of three months duration with an estimated cost of \$875,000) 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.

Form 1
Page 4

Award No. 36234
Docket No. MW-36211
02-3-00-3-405

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 24th day of September 2002.