

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36594
Docket No. MW-35745
03-3-99-3-728**

The Third Division consisted of the regular members and in addition Referee Robert M. O'Brien when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Union Pacific Railroad Company (formerly The Denver
(and Rio Grande Western Railroad Company)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned outside forces (M.C.D.S. Inc.) to perform Maintenance of Way work (office remodeling) at the North Yard Storehouse and Office complex in Denver, Colorado beginning June 1, 1998 and continuing through July 8, 1998 (System File D-98-39C/1155673 DRG).**
- (2) The Agreement was further violated when the Carrier failed to provide a timely notice and failed to meet with the General Chairman regarding its intent to contract out the work in Part (1) above as required by Appendix D of the Agreement.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants D. E. Smith, G. L. Wiese, H. J. Deputy, III, J. A. Brainard and G.A. Van Damme shall ' . . . now be compensated an equal and proportionate share of all hours worked by M.C.D.S. employees on this project commencing from June 1, 1998, through July 8, 1998.' (Emphasis in original)."**

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.

On May 28, 1998, the Carrier notified the General Chairman that it intended to contract the interior remodeling of two buildings it owned in Denver, Colorado. Between June 1 and July 8, 1998, M.C.D.S., Inc. performed this interior remodeling. The work consisted of framing steel studs, hanging drywall, taping and finishing, hanging doors and windows and so forth.

On June 2, 1998, the Organization protested the contracting out of the aforementioned remodeling work to M.C.D.S., Inc. The Organization claimed that this work came under its Scope Rule. It requested a conference in accordance with the May 17, 1968 National Agreement. However, it appears that no conference was ever held.

On July 28, 1998, the Organization filed a claim on behalf of a Foreman and four Carpenters assigned to Colorado Division B&B Gang No. 4398 headquartered at Burnham (Denver) Colorado. The Organization argues that these Claimants were available and should have been assigned the interior building remodeling that was contracted to M.C.D.S., Inc. It contends that the Claimants had performed similar work at the Burnham Locomotive Shops in Denver.

The Carrier denied the claim asserting that work of this nature customarily has been contracted out at Denver, Colorado. The claim was appealed on the property and subsequently to the Board.

The Organization argues that the Carrier violated Article IV of the May 17, 1968 National Agreement when it failed to confer with the General Chairman prior to assigning the building remodeling work to an outside contractor. However, this issue is not properly before the Board because it was never raised on the property. And in any event, on November 18, 1998, the General Chairman advised the Carrier that its June 2, 1998, 15-day notice had little bearing because "It has long been recognized that

the Carrier has the right to proceed with these contracting issues inasmuch as the Organization has the right to file claim(s) regarding such contracted work."

The Scope Rule involved in this case is a general Rule. It does not reserve any specific work to the Maintenance of Way craft. Thus, the Organization must demonstrate that employees in the Bridge and Building sub-department have customarily and traditionally performed the work contracted to M.C.D.S., Inc. in June and July 1998. The Organization did not sustain that burden of proof, in the Board's opinion.

On the property, the Carrier asserted that the only time Bridge and Building Department employees did any work on the P&M building in Denver was to hang a bulletin board and some signs when the Southern Pacific Railroad owned the building. It maintained that all other maintenance work at the P&M building was contracted out. The Organization never refuted this contention. Therefore, there is no evidence before the Board that Bridge and Building sub-department employees customarily, traditionally and historically performed the interior remodeling work contracted to M.C.D.S., Inc in June and July 1998. The claim is denied as a result.

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 16th day of June 2003.