

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36935
Docket No. MW-36185
04-3-00-3-351**

The Third Division consisted of the regular members and in addition Referee Elliott H. Goldstein 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 (Russ & Company) to perform Maintenance of Way work (building renovation, i.e., replace partitions and drywall, painting and related work) at the Gray Brick Yard office building, Collinwood Yard in Cleveland, Ohio beginning October 5 and continuing through December 18, 1998 [Carrier’s Files 12(99-623), 12(99-630) and 12(99-628)].**
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with advance written notice of its intent to contract out the work described in Part (1) above as required by the Scope Rule.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants K. G. Champa, F. R. Hoyt, J. D’Orazio, S. J. La Cavera, R. H. Zinni and K. Watts shall now each be compensated for ten (10) hours’ pay at their respective straight time rates of pay for each date of October 5, 6, 7, 8, 12, 13, 14, 15, 19, 20, 21, 22, 26, 27, 28, 29, November 2, 3, 4, 5, 9, 10, 11, 12, 16, 17, 18, 19, 23, 24, 25, 30, December 1, 2, 3, 7, 8, 9, 10, 14, 15, 16 and 17, 1998, and each Claimant shall be compensated for ten (10) hours’ pay at their appropriate time**

and one-half rates of pay for each date of October 9, 16, 23, 30, November 6, 13, 20, 27, December 4, 11 and 18, 1998 and continuing.”

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.

According to the record, on June 28, 1998, the Carrier entered into a Property Lease Agreement with CSX Intermodal, Inc. (“CSXI”) wherein the Carrier agreed to lease to CSXI certain property located in Collinwood Yard. A building referred to as the Gray Brick Yard Office was located within the limits, or boundaries, of the leased property and was to be used by CSXI as an office and transloading facility for its intermodal operations. On September 2, 1998, the lease was amended to include additional areas within the leasehold.

The Organization asserts that on the claim dates, contractor forces performed renovations to the Gray Brick Yard Office building. According to the Organization, the work including the removal of drywall, paneling, and stud walls, installation of new steel stud and drywall partitions, and power washing and painting of the building’s exterior. The Organization argues that the Carrier violated the Scope Rule by failing to serve notice of its intent to contract out the work. In the Organization’s view, notice was required because the work performed by the contractor had been historically and customarily performed by the Carrier’s B&B Department employees, and the Claimants were entitled to the work under the Scope Rule and Rule 1.

The Carrier asserts that the work in dispute was undertaken by CSXI following the execution of the lease agreement, and as a result, did not fall within the ambit of the parties' Scope Rule. The Carrier also stresses that when leased to and under the control of the lessee, property such as the Gray Brick Yard Office building here, ceases to fall within the Scope Rule. According to the terms of the lease, CSXI had leased the building for use as an office and transloading facility for its intermodal operations. The Carrier submits that CSXI, not the Carrier, arranged for the renovations and the Carrier did not derive any benefit whatsoever from the improvements made to the building. Thus, the Carrier emphasizes that it had no contractual obligation to provide the Organization with any contracting out notice.

The Board reviewed the record in this case and finds that the Carrier provided sufficient evidence that the work performed by the contractor was not associated with the Carrier's operations, and thus not covered by the Scope Rule. The record contains ample evidence that the Gray Brick Yard Office building was located within the leasehold, and that the building renovations were arranged and funded by the tenant, CSXI, and were not for the benefit of the Carrier. Thus, the Carrier was under no requirement to notify the Organization about the work CSXI had planned to undertake. See Third Division Awards 29515, 29581, 29933, 30947, 32317, 32810 and 35762.

Thus the Organization failed to prove, by substantial evidence, that the Claimants were entitled to the work in dispute. CSXI had no agreement with the Organization. Given the facts of record, the Board must conclude that the claim should be denied.

AWARD

Claim denied.

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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 22nd day of March 2004.