

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37152
Docket No. MW-37399
04-3-02-3-444

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 two (2) employees of an outside concern (Exclusive Contractors) to perform general remodeling work (remove/install vanities, mirrors, stalls around toilets, baby changing tables, towel holders, drop ceilings, doors, hardware, wallpaper, wall repair, painting and related work) in the two (2) washrooms at the Carrier's Chicago Union Station beginning January 22 through February 16, 2001 and on February 19, 20, 21 and 22, 2001 (Carrier's Files BMW-433, BMW-434, BMW-435, BMW-436 and BMW-443 NRP).
- (2) As a consequence of the violation referred to in Part (1) above, and for their loss of work opportunity, Claimants D. Mullenhoff and S. Toledo shall now each be allowed one hundred ninety-two (192) hours' pay at their respective rates of pay."

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.

This claim raises the issue of whether the Carrier's contracting out of certain electrical and plumbing work performed in two washrooms 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 limited number of active B&B Mechanics located at Union Station were furloughed as a result of this contracting, but were performing work on other projects and ongoing maintenance on the claim dates.

The Organization argues that this routine remodeling work is scope-covered, traditionally performed by employees, the Claimants were qualified and available to perform the work which could have been accomplished by them on rest days or during overtime, and that the Carrier made no good faith effort to use its own workforce. It asserts that the contracting represents a loss of work opportunity for the Claimants, properly compensable by monetary relief despite the Carrier's "fully employed" defense, citing Third Division Awards 3955, 5172, 11072, 19268, 19898, 19924, 21609, 27614, 31622, and 31798.

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 its B&B maintenance force at Union Station consisted of one Foreman and two Mechanics, who were involved elsewhere, and that sufficient skilled manpower was not available due to the magnitude of the project involving extensive electrical and plumbing work and the time constraints for completion. The Carrier notes that the disputed work was only a portion of a much larger project, and argues that the Organization failed to show that work of this magnitude is exclusively reserved to employees under the scope of the Agreement, or that it is required to piecemeal a project to reserve work for a particular craft or hire additional employees for the limited time period involved, citing Third Division Awards 12317, 22943, 25816, 28739, 28794, 29187, and 36050. The Carrier also argues that no monetary relief is

appropriate for the Claimants who were fully employed, relying on Third Division Awards 18305, 26481, and 28923.

A careful review of the record convinces the Board that the Organization failed to sustain its burden of proving that the restroom renovation work in issue, which was part of a larger project involving the installation of air conditioning and related ductwork, had to be piecemealed to the Claimants, who were the bulk of the B&B maintenance force at Union Station and otherwise occupied, and could not have completed the necessary work within the time parameters of the project. Unlike the situation in Third Division Award 27614, where the sole on property defense raised by the Carrier was the emergency nature of the work which it failed to prove, the Carrier herein properly raised the larger nature of the project covered by its November 22, 2000 notice and the Organization did not take issue with this fact. Further, the Organization did not rebut the Carrier's assertion on the property that the Claimants never engaged in renovation work of this magnitude 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. Third Division Award 36050.

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 25th day of August 2004.