

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37167
Docket No. MW-36157
04-3-00-3-347

The Third Division consisted of the regular members and in addition Referee Dana Edward Eischen 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 an outside contractor (Pools Paving) to dismantle the Car Department building at the River Bed and the Pump House in Collinwood Yard at Cleveland, Ohio on July 14 and 27, 1998 [Carrier's File 12(99-611)].
- (2) The Agreement was violated when the Carrier assigned an outside contractor (Great Lakes Construction Company) to dismantle Car Department Building No. 173.965 in Collinwood Yard at Cleveland, Ohio on July 14, 1998 [Carrier's File 12(99-613)].
- (3) The Agreement was further violated when the Carrier failed and refused to furnish the General Chairman with advance written notice of its intent to contract out the work described in Parts (1) and/or (2) above as required by the Scope Rule.
- (4) As a consequence of the violations referred to in Parts (1) and/or (3) above, Claimants K. G. Champa, F. R. Hoyt, J. A. Antonello and B. Cruyton shall be allowed ' . . . (8) hours for each day at their appropriate straight time rates of pay, credits toward vacation and all other benefits for July 14 & 27, 1998.'

- (5) As a consequence of the violations referred to in Parts (2) and/or (3) above, Claimants K. G. Champa, F. R. Hoyt, S. J. LaCavera and K. Watts shall be allowed ‘ . . . eight (8) hours for each day at their appropriate straight time rates of pay, credits toward vacation and all other benefits for July 14, 1998.’”

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.

In this case, the Organization claims violations of the Scope Rule and related notification and discussion provisions of the Agreement when, without prior notice to the BMW General Chairman, the Carrier contracted out the work of “tearing down” or “demolishing” several old buildings no longer in use at Collinwood Yard. It apparently is not disputed that on claim dates the employees of two different contractors utilized excavators and dump trucks to demolish the wood and brick structures and haul away the debris.

Claimants K. G. Champa, F. R. Hoyt, S. J. LaCavera and K. Watts have established and hold seniority within their respective classes in the Bridge and Building (B&B) Department. Claimants J. A. Antonello and B. Cruyton have established and hold seniority in various classes and groups, including that as Vehicle Operator, within the Track Department on the Cleveland Seniority District

on the Dearborn Division. The Organization filed separate claims for the different buildings, but the parties consolidated the claims into this one case on appeal.

Analysis of the record shows that the respective positions advanced by the parties in this case are not matters of first impression but, rather, old wine in new bottles. The Organization asserts that the work of demolishing buildings is reserved to BMW-employees by the express language of the Scope Rule and/or by custom practice and tradition of regular performance. The Carrier counters that the Scope Rule is "general" in nature, that demolition work has frequently been subcontracted in the past and that a few isolated statements by employees that they have performed "similar work" occasionally is not enough to show system-wide reservation of all demolition work to the exclusion of others.

Nothing in this record persuades us that the authoritative precedent found in Third Division Awards 27626 and 27629 between these same parties should not govern the present case. We conclude that a denial of this claim is required because, as in the earlier cases, the Organization failed to carry its burden of proof that the work of building demolition is covered by the Scope Rule or reserved thereby for performance by BMW-employees. In short, we consider the following holdings in Third Division Award 27629 equally applicable to and dispositive of the present claim:

"The burden of proof lies with the Organization to support its contentions (Third Division Awards 24508, 26711). This Board's review of the facts and circumstances in the instant case fails to support the Organization's position. A search of the record finds that the work is not specifically covered by the language of the Scope Rule. When not explicitly granted by Agreement, the Organization must show proof that the work was customarily and traditionally performed by the employees (Third Division Awards 23423, 26804). Statements to that effect as well as the advertisements are not proof."

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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 28th day of September 2004.