

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37647
Docket No. MW-36607
05-3-01-3-118**

The Third Division consisted of the regular members and in addition Referee Steven M. Bierig when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Union Pacific Railroad Company (former Chicago
(& North Western Transportation Company)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned outside forces (Spirtas Demolition) to perform Maintenance of Way and Structures Department work (dismantle and remove car shop buildings) in Clinton, Iowa beginning November 16, 1999 and continuing through February 4, 2000 (System File 3KB-6615T/1221570 CNW).**
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with proper written notice of its intent to contract out the above-referenced work or make a good faith attempt to reach an understanding concerning such contracting as required by Rule 1(b).**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants J. M. Naughton, J. A. Pope, E. Ray, G. Kalata, J. Sawvell and C. Jones shall now each be compensated at their respective rates of pay for an equal proportionate share of the total man-hours expended by the outside forces in the performance of the aforesaid work."**

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.

Claimants J. M. Naughton, J. A. Pope, E. Ray and G. Kalata hold seniority in the Bridge & Building Subdepartment on District 3. Claimants J. Sawvell and C. Jones hold seniority as Machine Operators common to the Track and Bridge and Building Subdepartment on District 3. All Claimants were regularly assigned as such to the B&B crew headquartered at Clinton, Iowa, when the instant dispute arose.

On September 20, 1999, the Carrier wrote Service Order No. 15773 to the General Chairman to notify him of its intent to contract asbestos/lead paint abatement and demolition of various buildings known as the Car Shop Buildings located at 1501 Comanche Avenue in Clinton, Iowa. On September 29, the General Chairman requested a conference to discuss the matter, which was held on October 21, 1999.

On November 16, 1999 and continuing through February 4, 2000, the Carrier assigned four employees of Spirtas Demolition to demolish/dismantle various Car Shop Buildings in Clinton, Iowa, and remove the rubble to a landfill. The four employees expended ten hours per day, seven days per week throughout the claim period, except for Thanksgiving (November 25) and Christmas Day. The work was performed using a crawler backhoe, a crawler dozer, a bobcat and two dump trucks.

Pursuant to that notice and subsequent discussions, the Organization contends that the Agreement was violated when the Carrier assigned members of

Spirtas Demolition to demolish the Car Shop Buildings at Clinton, Iowa, and transfer the rubble to a landfill. First, it claims that the Carrier did not provide proper notice to the General Chairman. Further, it takes the position that the work involved in this matter is specifically reserved to BMW-employees by Rule 1(b). Finally, while the work is identified as involving potential asbestos abatement, the evidence shows that the Carrier has been unable to substantiate that the work was in fact asbestos abatement, thus negating its defense. Thus, this is work that is properly reserved to the Organization. Because the Claimants were denied the right to perform the work, the Organization argues that the Claimants should be compensated for the lost work opportunity.

Conversely, the Carrier takes the position that the Organization cannot meet its burden of proof in this matter. It contends that the work that was contracted out was that of demolition of buildings which involved asbestos and lead abatement, which the Organization concedes is beyond its purview.

After a review of the matter, we find that the Organization successfully substantiating its claim in the instant matter. While the Carrier claimed that the work was that of asbestos/lead abatement, it not been able to substantiate such defense. Thus, we are left with a project that involved the demolition of Car Shop Buildings in Clinton, Iowa. According to the Organization, such demolition is covered by Rule 1(b) of the Agreement which provides in relevant part:

"Employees included within the scope of this Agreement in the Maintenance of Way and Structures Department shall perform all work in connection with the construction, maintenance, repair and dismantling of tracks, structures and other facilities used in the operation of the Company in the performance of common carrier service on the operating property. . . ."

We note that while there does appear to be a dispute about the nature of the work performed, the Carrier has been unable to substantiate that the instant work involved asbestos and lead abatement. Therefore, we find that the work in question falls squarely within the scope of Organization work as set forth in Rule 1(b). See Third Division Award 37314, Public Law Board No. 1844, Award 54, and Public Law Board No. 2960, Award 186.

Thus, having determined that the work was reserved to BMW-employees, we must determine the proper remedy. The Organization claims that the Claimants should be compensated for all hours worked by the contractor. The Carrier contends that because the Claimants were fully employed, they are not entitled to any additional compensation. Such argument has been previously rejected. See Third Division Award 30182.

Therefore, in light of these conclusions, the Claimants shall be made whole for all monetary losses.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 7th day of December 2005.