

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40251
Docket No. MW-39562
10-3-NRAB-00003-060345
(06-3-345)**

The Third Division consisted of the regular members and in addition Referee Ann S. Kenis when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
PARTIES TO DISPUTE: (
(Soo Line Railroad Company (former Chicago,
(Milwaukee, St. Paul and Pacific 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 to perform Maintenance of Way and Structures Department work (exterior remodeling including, but not limited to, installation and/or repair of brickwork, installation of concrete skirt) on the Depot at Hastings, Minnesota beginning on August 18 and continuing through August 25, 2004 (System File C-41-04-C080-13/8-00228-109/0-0011-354 CMP).**
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with a proper advance notice of its intent to contract out said work as required by Rule 1 and failed to enter good-faith discussions to reduce the incidence of subcontracting and increase the use of Maintenance of Way forces as set forth in Appendix I.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants L. Wieting, Jr., E. Arnold, P. Lubeck and M. Norby shall now each be compensated for one hundred forty-two (142) hours at their respective straight time 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.

On February 19, 2004, the Carrier provided notice to the Organization of its intent to use an outside contractor for remodeling work at the Hastings, Minnesota, Depot. In particular, the work involved the installation of new structural and non-structural building components to meet the space requirements of additional personnel. The parties met on February 27, 2004, pursuant to the Organization's request, but they did not reach an understanding concerning the Carrier's plans.

The Organization thereafter filed the instant claim, alleging that the installation and/or repair of brickwork, and the installation of a concrete skirt around the Hastings Depot by an outside contractor violated the Agreement. The Organization contended that, the Carrier has utilized its B&B forces to perform construction, remodeling and carpentry work for many decades and, therefore, the disputed work is encompassed within the scope of the Agreement. Statements from B&B employees, bulletins and timesheets were provided to support the historical performance of said work. The Organization further contended that the notice of intent to subcontract provided by the Carrier was defective because it did not specify the work in question or the timeframe when the work was actually performed.

The Carrier asserts that the instant claim is improper and should be barred. It points out that the Organization filed several claims related to the remodeling

project at the Hastings, Minnesota, depot. In the Carrier's view, the Organization should not be permitted to file multiple claims for the same work. In addition, the Carrier argues that the record does not show that the work has been traditionally, historically and customarily performed by BMW-employees. On the contrary, the Carrier provided numerous statements indicating that outside contractors have typically performed the work at issue here. Therefore, the Carrier had no obligation to provide notice. Nonetheless, the Carrier asserts that it notified and met with the Organization in good faith and the Organization did not offer any proof as to how its members could have performed the disputed work.

Based upon our review of the voluminous record, the Board finds at the outset that the instant claim is not barred from consideration. The Carrier failed to establish that the instant claim duplicates any other claim. This dispute addresses the installation and repair of brick work and the installation of a concrete skirt on the exterior of the Hastings Depot. Although the Organization filed other claims protesting the work performed by contractors in connection with the remodeling of the Hastings Depot, the Carrier failed to identify any other claim regarding this particular work. Accordingly, we conclude that the claim is properly before the Board.

So stating, however, the burden of proof was on the Organization to demonstrate that the particular work claimed herein belongs to its members and is encompassed within the scope of the Agreement. We are not convinced that the necessary evidentiary showing was made. The record did not establish that the work specific to this claim was historically or customarily performed by BMW-employees. On the contrary, it appears that contractors have also performed the work in the past. A customary, traditional practice of employee performance has not been shown.

The Organization further asserts that it should prevail because the notice of intent to subcontract was defective. We disagree. The Carrier complied with the notice and conferencing requirements and entered into good-faith discussions with the Organization concerning the remodeling work at the Hastings Depot, and the claimed work herein was encompassed within the notice provided.

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Based on all the foregoing, the claim must be denied.

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 15th day of January 2010.