

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40324
Docket No. MW-40038
10-3-NRAB-00003-070245
(07-3-245)**

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 (install replacement windows and gutter, painting and brick work and related remodeling work) at the Depot at Hastings, Minnesota beginning on October 14 and continuing through November 17, 2004 (System File C-53-04-C080-19/8-00228-116 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, M. Norby and A. Anderson shall now each be compensated at their respective straight time rates of pay for a proportionate share of**

the three hundred (300) 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.

The record shows that on February 19, 2004, the Carrier served notice of its intent to contract out a large remodeling project involving six locations, including the Hastings Depot. The work at that location involved the installation of new structural and non-structural building components to meet space requirements for additional personnel. It was anticipated that the work would commence on March 4, 2004 and would be completed in approximately one month's time. The parties subsequently met in conference to discuss the proposed contracting.

This is one of numerous claims filed concerning remodeling work at Hastings. It protests the contracting out of the installation of replacement windows as well as gutter, painting and brick work, beginning October 14, 2004. The Organization contends that the earlier February 19, 2004 notice of intent to subcontract does not encompass the work at issue in this claim and does not coincide with the dates on which the work was performed. Because there was no proper advance notice of the particular work involved in this dispute, the Organization maintains that it was not afforded an opportunity to enter into good faith discussions with the Carrier concerning the proposed subcontracting.

The Organization further argues that the work at issue is basic BMW work which has traditionally, historically, and customarily been performed by Carrier forces. This was not an unusually large project requiring extensive manpower, the Organization points out. The Carrier could have utilized its own B&B forces to complete this work without resorting to contracting out.

The Carrier contends that it complied with its notice and conferencing obligations under Rule 1 and Appendix I. The fact that the work did not proceed within the estimated time frames listed on the notice of intent does not establish a violation of the Agreement. Moreover, the Carrier asserts that the magnitude of this project was beyond the capabilities of its forces. Although the Carrier does not deny that B&B forces have the ability to perform some aspects of remodeling work, the Organization has not shown that the particular work claimed in this case has been customarily and historically performed by its members. On the contrary, these large scale projects have been contracted out in the past. Equally important, the Carrier submits that it was not required to piecemeal the work so that Carrier forces could perform discrete pieces of the overall project.

The Board reviewed the lengthy record and finds that the Organization has not established that the Carrier violated the Agreement. The parties disagree as to the scope of the February 19, 2004 notice of intent to subcontract. Given their divergent positions, it was the Organization's burden to prove that the claimed work was not encompassed within that notice. The Board is not convinced that the Organization shouldered its burden. The work that was performed appears to be part and parcel of the remodeling project at the Hastings Depot. This was not a new project or one that was separate and apart from the remodeling work at the depot. The fact that some of the work involved in the project was started later than originally anticipated does not render the original notice fatal or insufficient. The Organization was afforded an opportunity to discuss the Hastings remodeling work with the Carrier and it availed itself of that opportunity.

In addition, the Board is not convinced that the Carrier improperly subcontracted the disputed work. There are only isolated instances in the record of employees performing painting, gutter, and window installation work. There are no instances which attest to the performance of brick work. This record is not

**Form 1
Page 4**

**Award No. 40324
Docket No. MW-40038
10-3-NRAB-00003-070245
(07-3-245)**

sufficient to meet the test of customary, historical, and traditional performance so as to come within the parameters of the Scope Rule.

In light of these factors, we are compelled to deny the claim.

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 1st day of March 2010.