Award No. 7105
Docket No. CL-7271

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

THE NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes on the New York, New Haven & Hartford Railroad that the Carrier violated the Clerks' Agreement,

(1) When it removed janitorial work consisting of washing and waxing floors of the General Offices located in the South Station, Boston, Mass., out from under the scope of the Clerks' Agreement, which work heretofore had been performed by Janitors and utilized the Metro Floor Waxing, Inc., of Boston, Mass., to perform the janitorial work, an outside concern not connected with the Railroad.

(2) That the qualified furloughed janitors at South Station, Boston, be reimbursed for all monies lost and if no furloughed janitors were available, then the regular janitors be reimbursed at punitive rates for every hour that janitorial work is performed on the fourth floor of the General Offices at Boston by non-employes of this company commencing on May 19th when nine employes of the Metro Company, referred to above, worked from 6 P. M. to Midnight, a total of 54 hours,—this claim to include all subsequent dates that the Metro Company employes, or any other outside concern, are used to perform janitors' regular assigned duties at the South Station, until this matter is adjusted.

EMPLOYES' STATEMENT OF FACTS: In April, 1953 there were 24 Janitors employed in the General Offices at South Station, Boston, Mass. There are now ten Janitors employed at that point, 8 working from Monday to Friday, two from Tuesday to Saturday, all performing janitorial duties. The rate of pay at the present time is $12.41 per day, the rate of their Supervisor is $15.32 per day.

In the latter part of 1952 or the early part of 1953, the fourth floor of the General Offices in the South Station, Boston, was remodeled, and a rubber or asphalt tile floor was installed. Claimants washed and waxed this floor until May 19, 1953, when the Metro Floor Waxing Company, Inc., of Boston was hired to wash and wax the floors on the fourth floor of the General Offices at Boston. Nine employes of this company worked from 6 P. M. to midnight to wash and wax the floors,—a total of 54 hours.

In these circumstances the use of an experienced maintenance firm with equipment and qualified employes engaged in this type of operation to do the occasional renewal work on the floors was, we submit, within permissible limits.

Award 6181 is an example of another field of the utilization of outside specialists to conduct operations not justifying the employment of a full-time force where equipment must necessarily remain idle a large portion of the time if it were purchased by the Carrier. The case goes further than the present in that it was conceded employes under the Clerks' agreement there involved have actually been performing the work contracted for many years. Nevertheless, a claim that there was a diversion of work properly belonging to employes was unanimously denied by this Division. The opinion says:

> "It is the function of Management, in the first instance, to determine the kind and amount of equipment needed (Award 5151)."

It is equally clear that under the established findings of this Division, a contract may not be subdivided and a claim predicated on the contention that a portion of it was improperly made. Award 5304:

> "When the claim involves subdividing the job, as this one does, both as to the locality and extent of the work, a denial seems clearly in order (Awards 3206, 4776 and 4954)."

Award 5619 concerns the proper interpretation of a scope rule such as the present one which names positions but does not define the work exclusively delegated to such assignments. On this issue the opinion decides:

> "The Scope Rule of the instant Agreement does not describe work as such. In accordance with numerous holdings of this Board recourse must be had to custom, tradition and practice to determine the work reserved to the classifications of employes listed in the Scope Rule."

The decision in Award 1217 similarly supports the position of Carrier in the instant case. There the contracting of developing of photographic film utilized in the copying of waybills, in substitution for typed copies theretofore used, was in the opinion of this Division permissibly contracted to an outside firm.

In the instant case Carrier submits its action in occasionally retaining an expert maintenance contractor to wax the floors of its general offices was permissible. The claim should be denied in its every particular.

All of the facts and arguments used in this case have been affirmatively presented to Employes' representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimants contend that work within the scope of their Agreement was contracted out to persons having no right thereto. The claim is for reparations for the loss of the work.

In the latter part of 1952 and the fore part of 1953, the fourth floor of the General Offices in the South Station, Boston, Massachusetts, was remodeled and an asphalt tile floor installed. The janitors employed in the building washed and waxed this floor until May 19, 1953. On that date, Carrier contracted with the Metro Floor Waxing Company to wash and wax the floor. Claimants contend that they have performed this class of work for many years and that they had performed work on this floor since its installation.

The Carrier states that this floor was waxed by the contractor when it was installed and, to maintain its appearance, the Carrier deemed it advisable

to have the wax renewed and the tile floors restored to their original finish. Carrier states that heavy duty floor polishers were necessary to do this work. The record shows that a quality polisher could be purchased for $385.00. It is not a machine that would be needed only occasionally. Its use would be more or less continuous. The cost is not prohibitive considering the uses to which it could be put. There is no evidence that any exceptional skill is required to operate the machine to produce the desired results. The work was clearly that of the janitors and none of the reasons for farming out the work, which have been recognized by this Board, appear to exist. We are of the opinion that the work farmed out belonged to janitors and that an affirmative award is required.

The claim is for the time and one-half rate. The penalty rate for work lost is the pro rata rate under the more recent awards of this Board. The claim will be allowed at the latter rate, except as to holidays which shall be at the time and one-half rate.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

AWARD

Claim sustained in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 5th day of August, 1955.