Award No. 10585
Docket No. MW-9881

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION
(Supplemental)

Eugene Russell, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

THE TEXAS AND PACIFIC RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the effective Agreement when it assigned the work of renewing the roof on the Abilene Freight Station to a General Contractor whose employes hold no seniority rights under the provisions of this Agreement.

(2) The following B&B employes each be allowed pay at their respective straight time rates for an equal proportionate share of the total man-hours consumed by the contractor's forces in performing the work referred to in part (1) of this claim.

F. E. McDonald
W. W. Calhoun
H. G. Austin
O. W. Crenshaw
C. R. Allman
W. C. Sines
F. Erpelding

EMPLOYES' STATEMENT OF FACTS: Commencing on May 4, 1956 the work of renewing the roof on the Abilene Freight Station was performed by a General Contractor whose employes hold no seniority rights under the provisions of this Agreement.

The work consisted of applying a tar and gravel roof of built-up construction of several layers of felt or membrane embedded in hot pitch or asphalt. The work was completed on May 9, 1956.

The work was of the nature and character that has been usually and traditionally performed by the Carrier's Bridge and Building employes.

The employes holding seniority in the Bridge and Building Department were available, fully qualified and could have expeditiously performed the work, had the Carrier so desired.

"Indeed, in the case at hand the exercise by management of judgment as to whether it should purchase printing or do its own has for years been an accepted practice, predating the current Agreement. In the light of this fact the Union can scarcely be heard to complain that the exercise of such judgment in the current instance is a violation of that Agreement.

"The objection may be made that the foregoing leaves the Union and the employes with little or no protection in the event the tides of managerial decision engulf job opportunities and accumulated benefits. The reply is first, that the decision to contract out must be based on bonafides and not on an intent to evade the contract's obligations. And second, if the Union believes it to be in its interests to limit the right of management to make good faith business decisions which have an immediate adverse effect on its members, it must secure such a limitation in negotiations. But absent such negotiated limitations, their existence cannot be inferred from the presence of contract clauses spelling out union recognition and other rules to govern the relationship of an employer and his employes while they are in his employ.

"DECISION

"The Company's action in subcontracting out the printing of labels formerly done within the Company's printing department did not violate the parties' collective bargaining Agreement."

From the foregoing, it is apparent that we have no agreement with the Brotherhood forbidding us to do what is complained of in this case, and that, therefore, we did not violate any such agreement as alleged.

3. The only claim which the Board could lawfully adjudicate, in any event, is the one which was made on the property and appealed to the Carrier's highest officer by the Brotherhood's letter of October 2, 1956, and denied by the Carrier's decision of November 19, 1956.

This follows from the literal wording of Section 3 First (i) of the Railway Labor Act, as well as from the rules of this Board. It is so elementary as to obviate the need for citation, here, of the numerous awards which have dismissed claims, insofar as the claims have sought money or relief which was different from, or in addition to, what was demanded when the case was handled on the property.

All known relevant argumentative facts and documentary evidence are included herein. All data submitted in support of Carrier's position has been presented to the employes or duly authorized representative thereof and made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: In this case the Organization claims violation of the Agreement by the Carrier in contracting-out and permitting a General Contractor to renew the roof of the Abilene Freight Station. The Claimants, collectively claim, compensation for the total man-hours spent by the contractor's forces in performing this work.

From a thorough study of this record and the exhaustive briefs filed by the respective parties, the Board finds nothing therein to justify the claims.

The Scope Rule in this agreement is no broader in form or content than the many, contained in other Agreements, which have been passed on by this Board in many previous Awards, and in this record we find no violation

The numerous Awards cited by the Organization are clearly distinguishable from the facts in this case or have been overruled by later Awards of the Board. The Scope Rule in this Agreement governs "the hours of service and working conditions" of the classes of employes listed therein, but there is no prohibition in the Agreement against contracting-out, which for many years past has been the general and common practice with this Carrier.

This Board follows ordinary rules of contract construction, is bound by the provisions of the Agreement before it, having no power to add to or detract therefrom. See **Award 2029** (Shaw); **6959** (Coffey); **7577** (Shugrue); **7631** (Smith); **7718** (Cluster); **9253** (Weston); **9314** (Johnson); **9606** (Schedler); **10008** (McMahon).

This record clearly establishes that roofing work of the type involved in this claim has been performed by independent contractors throughout the Carrier's history, and this practice has been continued through several revisions of the Agreement between the parties, including the Agreement presently in effect, and the existing Scope Rule has not been changed during this period.

When a contract is negotiated and existing practices are not abrogated or changed by its terms such practices are enforceable to the same extent as the provisions of the contract itself. (See Award 5747 (Wenke))

We find that the practice here complained of has been followed for many years by this Carrier and has not been abrogated or changed by the Scope Rule or any other provision of the current Agreement between the parties.

We do not find any significant difference in the contentions advanced by the parties on the property and those contained in the entire record.

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 has not been violated.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of May 1962.