Award No. 12298

Docket No. MW-11736

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Benjamin H. Wolf, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

ILLINOIS CENTRAL RAILROAD COMPANY

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

(1) The Carrier violated the effective Agreement when, on February 28, March 3, 4, 5, 6 and 7, 1958, it assigned the work of repairing window sash in Room 601 of its General Office Building at Chicago, Illinois to the Ellington Miller Company whose employes hold no seniority rights under the provisions of this Agreement.

(2) The decision by Superintendent Bodell dated August 27, 1958 was not in conformance with the requirements of Article V of the August 21, 1954 Agreement.

(3) Because of the violation referred to in Parts (1) and (2) of this Statement of Claim, the Carrier now be required to allow the following claim which was presented on April 23, 1958:

> "That Maintenance of Way B&B Carpenter E. Klimek be paid at pro rata time for February 28, March 3, 4, 5, 6 and 7, 1958 and F. Bach be paid pro-rata time for March 5, 6 and 7, 1958."

The Carrier has declined this claim.

EMPLOYES' STATEMENT OF FACTS: The facts surrounding the presentation of this claim are substantially set forth in the letter of claim presentation (referred to in Part (3) of the Statement of Claim), which reads:

"1102 Dunlop
Forest Park, Illinois

April 23, 1958

Mr. J. H. Megee
Division Engineer
Illinois Central Railroad
135 East 11th Place
Chicago 5, Illinois

Dear Sir:

Claim is presented as follows:

it does not know what reasons are to be urged to support the claim. If the carrier is not to be limited to the reasons for disallowance at the time it is first disallowed, the purpose of requiring the statement of such reason is obscure and we think the rule is so vague and uncertain in its intent and so indefinite in its meaning and application that no detailed statement of reasons is required thereunder and that notice for disallowance here given satisfies its requirements."

Carrier submits that the Superintendent, in concurring with the Division Engineer's opinion, gave a reason for declining the claim, within the meaning of the August 21, 1954 Agreement. The Employes' position to the contrary is not well taken and should be dismissed.

SUMMARY

The Carrier submits that it has shown (1) that remodeling work such as involved here has been contracted out since 1926—long before the agreement was negotiated—and continued through subsequent amendments, without protest and without abrogation; (2) that the work has never been recognized as belonging exclusively to Maintenance of Way employes by rules of the agreement or past practice; (3) that the particular remodeling work is unusual and unique so far as the Carrier is concerned as only seven offices on the property have been remodeled with the same or similar material and craftsmanship, and those by outside contractors and; (4) that the claim was properly handled at all levels of the grievance procedure per Article V of the August 21, 1954 Agreement.

The claim should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The Petitioner asks that this claim be allowed as presented because the Carrier failed to notify the Claimant of the reasons for its disallowance as required by Article V, of the August 21, 1954 agreement, which reads, in part as follows:

"1. All claims or grievances arising on or after January 1, 1955 shall be handled as follows:

"(a) All claims or grievances must be presented in writing by or on behalf of the employe involved, to the officer of the carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed, the carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employe or his representative) in writing of the reasons for such disallowance. If not to notified, the claim or grievance shall be allowed as presented, . . ."

Petitioner's argument is based on the fact that Superintendent Bodell's reason for declining the claim was merely a concurrence in the opinion of the division engineer who first denied the claim. Petitioner urges that Article V requires, not a stereotyped reason, but one individually tailored to fit the type of claim, rule or factual situation involved in each case.

We hold that the Superintendent's reply satisfied the rule. By concurring in the division engineer's reasons, the Superintendent must be deemed to

have incorporated them by reference as though they were set forth at length. Article V does not require that the reasons be stated explicitly, or that they be detailed, or different or, for that matter, valid. This claim should be resolved on the merits.

The Petitioner claims that the Carrier violated the Scope Rule of the Agreement in contracting out work which should have been performed by B&B employes of the Carrier.

The Scope Rule of the Agreement is general in form and does not list the particular work assigned to each category of worker. This Board has consistently held that where such a Scope Rule exists the Petitioner has the burden of proving that the work was of a kind that has historically and traditionally been assigned to and performed by the Carrier's B&B employes. Award 11832. The work was described by the Petitioner as the "repairing of window sash in Room 601" of the Carrier's General Office Building in Chicago, Illinois. Although the Carrier never denied that the repairing of window sash was involved, it described the work as the refinishing of the office of a Vice-President of the Carrier which was made necessary when air conditioning units were replaced and relocated in the offices concerned.

The room involved was originally remodeled, without protest by the Petitioner, by the very contractor now complained of. The work was unusual and unique, the room being finished with a wood veneer over canvas.

Carrier also listed nummerous instances in which outside contractors were used in remodeling, altering, and repairing its General Office Building, both before and since the effective agreement was adopted.

The Petitioner, on the other hand, offered no evidence other than the mere assertion that this was B&B Department work. We have, heretofore, held that mere assertion is not proof.

The Petitioner has failed to sustain its burden of proof.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February, 1964.