

Award No. 14207

Docket No. MW-15554

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Bernard E. Perelson, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY**

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

(1) The Carrier violated the Agreement when it assigned or otherwise permitted outside forces to remodel Building No. 74 at the Lincoln Terminal, Lincoln, Nebraska. (Carrier's File M-998-64).

(2) Each of the following named Bridge and Building Sub-department employees 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:

Foremen

A. W. Goodman
W. Z. Skunkwiler
A. Edwards

Mechanics

C. Kidd
J. Koch
A. J. Bauer
Lee Pummel
R. P. Woods
R. F. Burling
D. E. Nichols
M. J. Pleskac
W. A. Kirkpatrick

Mechanics (cont'd)

R. L. Quick
K. Leudtke
A. Meyer
J. A. Detter
E. C. Kempf

Helpers

L. A. Hopkins
F. York
H. L. Bohling
A. Oborny
J. M. Gannon
C. A. Johnson

EMPLOYEES' STATEMENT OF FACTS: Commencing on March 5, 1964, the Carrier, without benefit of negotiations with or the concurrence of the Employees, assigned or otherwise permitted outside forces to remodel Building No. 74 (call office building) at the Lincoln Terminal.

All of the work involved was included in a contract with a general contractor (Hawkins Construction Company) to furnish labor, material, tools, equipment and building permits, necessary to complete the project, at a cost of \$622,636.00 divided as follows:

New diesel shop and remodel drop pit building	\$563,387.00
Remodel roundhouse	21,267.00
Remodel power plant building	13,499.00
Remodel building No. 74	24,483.00

The contract included guarantees of various numbers of years on the roofing work, plumbing work and other work. In addition, the contract included guarantees that the work would comply with all building regulations and ordinances of the City of Lincoln, which guarantees can be made only by a contractor licensed to perform this highly skilled work. Moreover, the heating, plumbing and electrical work required licensed craftsmen, none of which are in Carrier's employ and none of which are represented by Petitioner.

The only part of the work performed by the contractor that has been claimed by the Union is the remodeling of the call office-bunkhouse, building No. 74, which was literally rebuilt from the ground up.

The schedule of rules agreement between the parties, effective September 1, 1949, and amendments thereto including Mediation Agreement A-5987 effective December 1959, are by reference made a part of this submission.

OPINION OF BOARD: This claim arose from the assignment of the work of remodeling of Carrier Building No. 74 at the Lincoln Terminal, Lincoln, Nebraska, to a contractor whose employees are not covered by the Agreement. The Bridge and Building employees make claim that Carrier violated the Agreement, particularly Rule 1 and 2. Petitioner points out that since the Scope Rule covers all employees in the Maintenance of Way and Structures Department except for those expressly excluded, it is a rule on inclusion and exclusion and thus reserved the right to perform this work to employees covered by this Agreement and precludes any other employee from doing it. Petitioner argues that since the work of constructing, repairing and maintaining of buildings is designated in Rule 2 and is reserved to the employees grouped under the Bridge and Building Sub-department, the work of remodeling the building here involved is work that clearly belongs to them.

Carrier denies that the Agreement gives the Maintenance of Way Employees the exclusive right to this work and points out that for the past 43 years it has maintained a practice of contracting out this type of work.

The record indicates that for a period of 43 years Carrier has contracted out certain construction work similar to the type here involved. Although the Agreement was renegotiated at different times, this practice persisted. We find that this practice which was not altered when new agreements were negotiated reflects the intent of the parties as to the type of construction work contemplated by the Agreement.

Disputes similar to work here involved has been considered by this Board on a number of occasions. In 1948, Awards 3823 and 3824. In 1951, Award 5521. In 1957, Award 7600. More recently, Awards 10937, 11716 and 13638 considered and denied similar disputes and the latter are controlling here. The claim therefore is denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 of the parties was not violated.

AWARD

Claim is 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 1966.