

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19253
Docket Number MW-19248

Robert M. O'Brien, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Kansas City Terminal Railway Company

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

(1) The Carrier violated the Agreement when, without prior notice to the General Chairman as required by Article IV of the May 17, 1968 National Agreement, it assigned the work of repairing the Union Station Annex Building at Kansas City, Missouri to outside forces. (System File KCT-W-192)

(2) B&B Foremen J. L. Stewart and W. T. Husher, Painter Foreman J. M. Dickson, B&B Mechanics M. H. Rahija, A. W. McGhee, J. E. Weis, B. W. Carlson, R. E. Sovers and R. T. Lampman each be allowed pay at their respective straight time rates for an equal proportionate share of the total number of man hours expended by outside forces in performing the work referred to in Part (1) of this claim.

OPINION OF BOARD: The Organization contends that Carrier violated the Agreement dated April 1, 1961 and in particular Article IV of the May 17, 1968 National Agreement by failing to give notice as provided therein to the General Chairman before contracting out the work of repairing Carrier's Union Station Annex Building at Kansas City, Missouri, which facility had been extensively damaged by a fire.

The Carrier admitted that it did not notify the General Chairman in writing of its plans to contract out the work involved. However, it contends that Article IV of the May 17, 1968 Agreement is not applicable in this dispute since the structure involved was leased out to the Reid Supply Company and their operation has no connection with Carrier's operations, therefore the work in dispute is not work within the scope of the applicable Agreement. On the property, the Carrier alleged that the structure involved was leased to the Reid Supply Company and since this was not refuted by the Organization, it must be taken as true.

Therefore, we are faced with the question whether work on a facility, owned by Carrier but which is leased out and has no connection with Carrier's railroad operations should be considered within the Scope of the Maintenance of Way Agreement for purposes of applying Article IV? This is an issue of first impression with this Board.

We have carefully examined the Awards proffered by both the Organization and the Carrier relative to leased premises. We are inclined to follow the reasoning of Judge Stone in Award 4783 wherein it was held: "... where a Carrier owns property used not in the operation or maintenance of its railroad, but for other and separate purposes, such property is outside the purview of the Agreement." Such reasoning was followed in Awards 9602, 10080, 10722, 10986 and others. The facility involved herein though owned by the Carrier was leased to the Reid Supply Company, and was not used in the operation or maintenance of its railroad. Therefore, we must conclude that repair of the facility was not work within the scope of the applicable schedule Agreement.

Since Article IV of the May 17, 1968 Agreement requires notice to be given to the General Chairman "in the event a carrier plans to contract out work within the scope of the applicable schedule agreement," no notice had to be served prior to contracting out said work. For this reason the claim will be 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 Employees involved in this dispute are respectively Carrier and Employees 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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 31st day of May 1972.