

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21482
Docket Number MW-21311

James C. McBrearty, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(The Washington Terminal Company

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

- (1) The Carrier violated the Agreement when, without an agreement in writing between the Manager and the General Chairman as required by paragraph (c) of the Scope rule, it contracted out the work of painting the 'West Basement' of the depot at Washington, D. C. on March 23 and 24, 1974 (System File MW-74-2).
- (2) Painters C. Ellsmore and L. H. Howard each be allowed pay at their respective time and one-half rate for an equal proportionate share of the total number of man-hours consumed in performing the work referred to in part (1) hereof.

OPINION OF BOARD: The basic facts in this case are not in dispute. On Monday, March 18, 1974, Carrier assigned Claimant C. Ellsmore, B&B Painter, to the task of painting the walls in an area of Carrier's Terminal between the Amtrak Commissary and the Southern Railway Commissary. On Tuesday, March 19, 1974, Claimant Ellsmore was taken off this assignment because of a lack of material to complete it. Subsequently, on Saturday and Sunday, March 23 and 24, 1974, which were the assigned days off of both claimants, outside contract painters completed the painting project which had been begun by Claimant Ellsmore.

A claim was initiated on behalf of B&B Painters Ellsmore and Howard for payment at the time and one-half rate for an amount of time equal to the number of man-hours consumed by the contract painters. In the handling of the case on the property, Petitioner alleged that 24 man-hours were consumed by the contract painters. Carrier neither affirmed nor denied this contention.

The claim is premised on the specific language of the Scope Rule which provides in pertinent part that:

Work covered by this Agreement shall not be contracted except by Agreement, in writing, between the Manager and General Chairman, except in emergencies.

There is no contention by either party that an emergency existed. There is no contention by either party which denies that the work in question is "covered by this Agreement." Rather, Carrier defends their denial of this claim on the basis that they knew nothing of the employment of contract painters inasmuch as the contract was made by Amtrak without Carrier's knowledge or concurrence.

Based on the factual situation which exists in this particular case, and without extending this decision to any other similar condition, it is our conclusion that Carrier has a liability which it cannot avoid by the defenses employed herein. However, the liability does not extend to both of the named Claimants. As previously noted, Claimant Ellsmore was used to begin the work. If he had not run out of material on Tuesday, March 19, 1974, it is reasonable to conclude that he would have completed the assignment within his normal work week. Therefore, Claimant Ellsmore should be allowed payment of twenty-four (24) hours at the pro rata rate of pay. The claim on behalf of Claimant Howard 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;

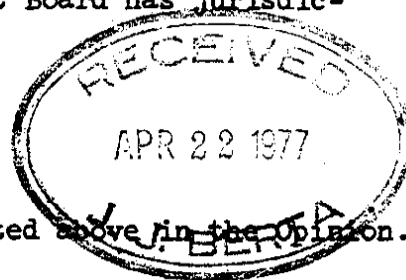
That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

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

That the Agreement was violated.

A W A R D

Claim sustained to the extent indicated above in the Opinion.



NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1977.