

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award number 21993
Docket Number MW-21784

James F. Searce, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Norfolk and Western Railway Company (Lake Region)

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

(1) The Carrier violated the Agreement when it assigned the work of dismantling the Erie Street Freight House at Toledo, Ohio to outside forces beginning September 16, 1974 (System File MW-BRS-74-28).

(2) The Carrier also violated Article IV of the May 17, 1968 National Agreement when it did not give the General Chairman advance written notice of its intention to contract said work.

(3) As a consequence of the aforesaid violations, Bridge and Building employees R. L. Singler, P. J. Evans, J. C. Barber and L. E. Snyder, Sr. each be allowed pay at their respective rates for an equal proportionate share of the total number of hours expended by outside forces.

OPINION OF BOARD: Carrier contracted with the B & P Wrecking Company, an outside contractor, to: perform dismantling and remove concrete footings, fill pits and basements, remove all debris, and make all utility cutoffs relevant to eliminating a structure described as the "Erie Street Freight House" at the Carrier's facilities in Toledo, Ohio. The structure was some fifty feet wide, over 300 feet in length and immediately adjacent to Carrier trackage.

While there was some dispute on the point, it would appear that for a period of time after the Carrier ceased using it, the structure had been leased to a firm or business not related to activities of the Carrier. According to the Carrier, after that lease expired, the building had stood vacant until storm damage rendered it useless and, in fact, it was found that the building had become a potential hazard. The Carrier contracted for its removal on the basis of a fee plus the salvage value of the building.

Pertinent provisions referred to by the Organization in its claim are as follows:

"In the event a carrier plans to contract out work within the scope of the applicable schedule agreement, the carrier shall notify the General Chairman of the organization involved in writing as far in advance of the date of the contracting transaction as is practicable and in any event not less than 15 days prior thereto..."

Article IV (in part), National
Agreement of May 17, 1968

"(a) All work of construction, maintenance, repair or dismantling of buildings, bridges, tunnels, wharves, docks and other structures, built of brick, tile, concrete, stone, wood or steel, turntables, walks, platforms, snow and sand fences, signs and similar structures, as well as all appurtenances thereto, loading, unloading and handling all kinds of bridge and building material, shall be bridge and building work, and shall be performed by employees in the Bridge and Building sub-department. Construction work may be done by contract where there is not sufficient number of properly qualified furloughed employees available to perform such work or the Railroad Company does not have proper equipment to perform it..."

Rule 40 (a) (in part) Classification
of Work. "Working Agreement",
April 1, 1951, as amended.

This general issue has been argued numerous times within this industry and often between these parties. The Organization claims to have performed similar work on other facilities owned by the Carrier; the Carrier contends that a longstanding practice has existed for it to use outside forces for such work. We find no support for the Carrier in its attempt to categorically deny work to B & B forces based on a claim that it has historically performed such work with contractors. Rule 40 (a) is not ambiguous in its designation of general work jurisdiction. Neither can the Carrier's defense of not having proper equipment or that the B & B forces were fully occupied be considered controlling. Both of these circumstances have been found wanting as defenses in other Awards in similar situations.

The compelling argument by the Carrier, not effectively refuted by the Organization, was the status or use of the building prior to its demolition. Carrier convincingly established that the structure had been out of railroad service for some years, even though it was close along Carrier's trackage. It had been leased to a firm for non-railroad purposes for a number of years and thereafter stood vacant. The Organization claims that B & B employees effected repairs to this building; the Carrier refutes such claims. Mere assertions by the Organization do not constitute proof of such work. In the absence thereof, we must conclude that the structure was mere property in the Carrier's inventory at the time its removal was contracted for. Railroad companies own considerable property outside the scope of the various Agreements covering represented employees, and numerous awards support Carrier's rights to use, repair and dispose of such properties without consultation with, or involvement of, the Organizations. We must conclude, based upon the data presented, that the "Erie Street Freight House" had become part of such property.

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

The Agreement was not violated.

A W A R D

Claims are denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1978.