NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25370
Docket Number MW-24471

Martin F. Scheinman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Southern Pacific Transportation Company
Texas and Louisiana Lines

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

(1) The Carrier violated the Agreement when it assigned the work of repairing the roof of the depot at San Antonio, Texas from November 10, 1980 through January 9, 1981 to outside forces (System File MW-81-33).

(2) B&B Foreman L. N. Ward and Carpenters A. Lira, F. Gonzales, R. Colmenero, R. Colmenero, Jr., J. D. Wickizer, M. W. Woytasczyk and M. M. Rodriguez each be allowed three hundred fifty (350) hours of pay at their respective straight time rates because of the violation referred to in Part (1) hereof.

OPINION OF BOARD: This dispute involves repairs made to a roof of Carrier's Depot at San Antonio, Texas. From November 10, 1980 to January 9, 1981, employes of the Beldon Roofing Remodeling Company performed those repairs. The Organization contends that Claimants, Foreman L. N. Ward and Carpenters A. Lira, F. Gonzales, R. Colmenero, Jr., J. D. Wickizer, M. W. Woytasczyk and M. M. Rodriguez, all of whom hold seniority in their respective classes within the Bridge and Building Subdepartment, should have performed the work, instead of the outside contractor.

In support of its claim, the Organization points to Articles 36 and 1 and 2 of the Agreement. Those Rules, in relevant part, read:

"ARTICLE 36
CONTRACTING OUT

"In the event this 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.

"If the General Chairman, or his representative, requests a meeting to discuss matters relating to the said contracting transaction, the designated representative of the Carrier shall promptly meet with him for that purpose. Carrier and Organization representatives shall make a good faith attempt to reach an understanding concerning said contracting, but if no understanding is reached the Carrier may nevertheless proceed with said contracting, and the Organization may file and progress claims in connection therewith.

"Nothing in this Article shall affect the existing rights of either party in connection with contracting out. Its purpose is to require the Carrier to give advance notice and, if requested, to meet with the General Chairman or his representative to discuss and if possible reach an understanding in connection therewith."

"ARTICLE 1
"SCOPE

"These rules govern rates of pay, hours of service and working conditions of all employees in the Maintenance of Way and Structures Department (not including supervisory forces above the rank of foreman) represented by the Brotherhood of Maintenance of Way Employes as follows:
...
"Bridge and Building Department:
Foremen, Assistant Foremen, Mechanics, Carpenters, Painters, Bridge Watchmen, Helpers, Laborers and Pumpers"

"ARTICLE 2
"SENIORITY RULES

"Section 1.(a) Except as otherwise provided, seniority begins at the time the employee's pay starts on the position to which assigned following bulletining of the vacancy.

"(c) Rights accruing to employees under their seniority entitled them to consideration for positions in accordance with their relative length of service as hereinafter provided."

The Organization notes that Carrier gave it notice under Article 36 of its intent to contract out the roof repair work. Since that Rule requires notice with respect to "work within the scope of the applicable schedule agreement", the Organization contends that Carrier's notice is an admission that repairing roofs on its buildings is encompassed within the Scope of the Agreement.

Furthermore, the Organization argues that Carrier has specifically recognized that the work in question belongs to the B & B forces. By letter dated March 30, 1981, Carrier's highest appellate officer stated, "It is recognized that B & B employees have performed a similar type work in the past...."

Finally, the Organization asserts that B & B employes had repaired an identical roof at the San Antonio Depot just prior to the contracting out of the repair work to the Beldon Roofing Remodeling Company.

Thus, the Organization concludes that the work in question is covered, by tradition and practice, under the Scope Rule of the Agreement. In addition, since B & B employes had performed this work in the past, the Organization reasons that they had the necessary expertise to perform the disputed work. Accordingly, the Organization asks that the claim be sustained. It seeks 350 hours for each Claimant at their respective straight time rates of pay.

Carrier, on the other hand, insists that no violation exists here. First, Carrier notes that it fully complied with the notice requirements of Article 36. Second, Carrier insists that the Scope Rule is general in character, listing positions instead of delineating work. In Carrier's view, for a claim to be valid under such a Rule, the Organization must prove that the disputed work was exclusively and traditionally performed by the employes on a system-wide basis. According to Carrier, the Organization has failed to meet that burden here.

Finally, Carrier notes that all of the Claimants were fully employed during the period the disputed work was performed by the contractor. Since no Claimant suffered any monetary loss thereby, Carrier maintains that even if an Agreement violation is found, no monetary relief should be awarded.

After a careful review of the record evidence, we are convinced that the claim must be rejected. This is so for a number of reasons. First, it is clear that the Scope Rule is general in nature. That is, the Rule does not specifically cover the work in dispute. Thus, to sustain its claim, the Organization must establish its right to this work by custom, tradition and practice on a system-wide basis.

Second, the Organization has failed to meet this burden. While it has proven that B & B employes did repair similar roofs in the past, it has not shown that they did so to the exclusion of all others.

Third, Carrier has never agreed, explicitly or implicitly, that the disputed work was performed exclusively by members of the Organization. While Carrier did acknowledge that "B & B employees have performed a similar type work in the past" Carrier went on to add "...however, this work is not reserved by agreement or past practice to B & B employees covered by the BMWE agreement".

Fourth, we do not agree that by notifying the Organization of its intent to contract out the roofing repairs, Carrier was admitting that the work was specifically covered under the Scope Rule. The giving of such notice is simply a procedural requirement pursuant to Article 36. It does not establish, affirmatively or negatively, that the disputed work is exclusively covered under the Scope Rule (see our Award No. 20920).

Finally, we do not believe that Awards cited by the Organization support its position here. Award No. 23402 concerns a procedural violation of the notice requirements of Article IV - Contracting Out - of the May 17, 1968 National Agreement. Here, however, it is undisputed that Carrier complied with the provisions of Article 36.

Similarly, Award No. 23423 involves an alleged procedural violation of Article IV. In addition, in that Award, this Board concluded that the Organization failed to prove that the disputed work was "customarily, traditionally and exclusively reserved to Maintenance of Way employees". Thus, it, too, does not support the Organization's contentions. Accordingly, and for the foregoing reasons, the claim must 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 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 was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 29th day of March 1985.