

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26224
Docket Number MW-26065

Gil Vernon, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(National Railroad Passenger Corporation
(Amtrak) - Northeast Corridor

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

(1) The Carrier violated the Agreement when it assigned outside forces to prepare and paint ceilings and walls in Room 420 complex in 30th Street Station on November 24 and 29, 1982 (System File NEC-BMWE-SD-588).

(2) Because of the aforesaid violation, Painter L. Rossini shall be allowed twelve (12) hours of pay at his straight time rate."

OPINION OF BOARD: There are two facts in this record which are not disputed. First, it is undisputed that on May 19, 1982, the Carrier gave the Union notice of certain work they intended to subcontract, including the following:

"New roofing for the 3rd floor level roof and the main roof over the concourse to include pedestals for HVAC systems and flashing around roof openings."

Second, at some time during November or December 1982 the Alper Roofing Company scraped, spackled and painted the ceiling and walls of three rooms on the 4th floor of the Carrier's 30th Street Station.

The Organization claims that the painting work was necessary because of damage done by vandals and that the work was performed on November 24 and 29, 1982. Moreover, they claim no notice was given. The Carrier claims that the damage was caused by an improper installation of a roof drain by the roofing contractor (Alper) and was repaired by them under the warranty provisions of the contract on December 6, 1982. Additionally, they assert the Organization had notice of the warranty provisions. Last, the Parties are at odds whether the Organization ever provided the Carrier with a copy of a March 17, 1983, rejection of a denial.

These factual claims and counter claims are significant because neither Party while on the property did anything meaningful to substantiate their assertions. There is nothing in this record to suggest the Union offered anything to support the idea that vandals caused the damage. On the other hand, the Carrier failed to put forth anything to show it was caused by improper roof repairs or even if it was that it was covered by a warranty provision. For instance, there is no copy of the contract with the roofing company in the record. Nor is a copy of the original notice in the record either.

Thus, neither Party has provided the evidence necessary to make an affirmative finding of fact to either sustain or deny the Claim based on their respective positions. Accordingly, in view of the irreconcilable state of the disputed facts we are compelled to dismiss the Claim.

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

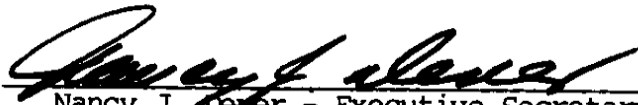
That the facts are in dispute.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 15th day of January 1987.