

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26504
Docket Number MW-25956

Robert W. McAllister, 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 it assigned outside forces to repair the Roundhouse roof and to perform related work January 3, 1983 through February 11, 1983.

(2) The Carrier also violated Appendix G (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, B&B Foreman A. W. McGhee, J. E. Weis and C. A. Becker and B&B Mechanics R. C. Carver, C. K. Leslie, T. W. Werkowitch, C. W. Dickerson, C. E. Stamey, G. G. Tester, J. B. Carver, J. H. Reed II and R. Carpenter shall each be allowed three hundred twenty-two hours of pay at their respective straight time rates."

OPINION OF BOARD: On December 25, 1982, the roof of the Carrier's Roundhouse was severely damaged by fire. A conference was held on December 28, 1982, relating to this fire damage. Despite disagreement over the details exchanged, it is established by the record that the Carrier alerted the Organization it wished to repair the roof through the use of an outside contractor. Work apparently began on January 3, 1983, by the Jenkins & Blair Construction crew. The Organization argues the Carrier's action violated Rule 2, Classification of Work, which reserves the work of repairing and maintaining buildings or other structures to the Organization. The Carrier informed the Organization on January 6, 1983, that the work in question required special skills and experience plus special equipment not owned by the Carrier to meet Insurance Company recommendations. The Organization replied it had performed many jobs that were a lot more complex than the fire damaged roof. Subsequently, the Carrier provided the Organization with the recommendations of the Consulting Engineering Firm, Boyd, Brown, Stude & Cambern, which states:

"We have inspected the damage to your property at 2660 Southwest Boulevard caused by the December 25, 1982 fire.

The existing condition of the structure, is in our opinion, hazardous to personnel and equipment. We recommend that the remaining portion of the damage be removed and replaced in substantially the same manner as existed prior to the fire.

In view of the dangerous conditions and the need for specific expertise in replacing the damaged members, we would suggest that you retain a competent contractor with experience in removing and replacing fire damaged structures."

Additionally, the Carrier told the Organization that B&B employees did not have the qualifications or experience to perform all phases of the overall project including the expertise required to restore the damage without causing damage to the remaining structure or injury to the workers. The Organization's reply rejected these assertions and claimed all B&B employees are experienced in repairing roofs and are very competent carpenters.

It is evident from the record that the Carrier did not give notice to the Organization fifteen (15) days prior to contracting out the disputed work. Nevertheless, the Organization has not rebutted by substantial evidence the Carrier position that the extensive fire damage to the Roundhouse roof was a dangerous condition necessitating immediate repair. The Organization pointed to the fact that B&B employees cleaned up all the fire debris on the Roundhouse floor. This does not alter the Carrier's contention that a dangerous condition existed. Under such circumstances, this Board concludes the Carrier's efforts to communicate with the Organization were good faith attempts to provide the Organization with as much advance notice of the contracting out as the circumstances warranted. Thus, we conclude that in accordance with previous Board decisions, the Carrier has established justifiable reasons for failing to comply with the fifteen (15) day notice. See Third Division Award Nos. 20158, 23203, 23578, and 24484.

With respect to the actual work involved, Third Division Award 19552 involved the same parties and the contracting out of repair work to the roof of Union Station. Therein, the Board found the Agreement provisions to be clear and unambiguous and regardless of past practice, it held that the Organization had a right to insist upon compliance with the Agreement terms. Notwithstanding, we find a lack of substantial evidence to negate the Carrier's position that the work involved was not the same as normally performed by members of the Organization. The Organization asserted its members had worked on jobs more complex than the fire damaged roof. This Claim is not supported by probative evidence relative to that issue. Our review of this matter causes the Board to conclude that the Organization has not met its burden of proof and has not established through evidence of probative value that the work of restoring an extensively fire damaged Roundhouse roof is reserved to the Organization by Agreement language or system-wide practice.

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:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of September 1987.