Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 27626
THIRD DIVISION Docket No. MW-26654
88-3-85-3-397

The Third Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance Way Employes
(
(Consolidated Rail Corporation

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

(1) The Agreement was violated when outside forces were used to dismantle and remove two (2) buildings at Glassboro, New Jersey on February 6, 7, 8, 9, 10, 13 and 14, 1984 (System Dockets CR-953, 954, 955, 956, 957 and 958).

(2) The Agreement was further violated when the Carrier did not give the General Chairman prior written notification of its plan to assign said work to outside forces.

(3) Because of the aforesaid violations, Machine Operators J. E. Castaldi, D. Cerveny, T. L. Hayes, J. Pezzello and R. Rhock and Trackman C. Miller shall each be allowed fifty-six (56) hours of pay at their respective straight time rates."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employees involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The basic facts in this case are set forth as follows. On February 6, 7, 8, 9, 10, 13 and 14, 1984, Carrier assigned an outside contractor to dismantle and remove two (2) buildings at Glassboro, New Jersey. One (1) foreman, three (3) machine operators and five (5) laborers employed by the outside firms worked eight (8) hours on each of the claimed dates for a total of fifty-six (56) hours per employee and said force utilization compelled the filing of the claims herein. It was the Organization's position that the disputed assignment involving dismantling and demolition work was customarily and traditionally performed by Carrier's BMWE forces and hence within the ambit of the Agreement's Scope Rule coverage. In its August 20, 1984, letter to Carrier, for example, the Organization gave illustrations of past work assignments whereby BMWE forces performed dismantling and demolition work

on Carrier's property and by extension maintained that said work was protected by the same Rule. Consequently and on this point, it argued that Carrier was required to comply with the aforesaid Rule's notification requirements before assigning covered work to outside contractors. This portion of the Scope Rule is referenced, in part, as follows:

> "In the event the Company plans to contract out work within the scope of this Agreement, except in emergencies, the Company shall notify the General Chairman involved in writing as far in advance of the date of the contracting transaction as is practicable and in any event not less than fifteen days prior thereto. 'Emergencies' applies to fires, flood, heavy snow and like circumstances.
>
> If the General Chairman, or his representative, requests a meeting to discuss matters relating to the said contracting transaction, the designated representative of the Company shall promptly meet with him for that purpose. Said Company and organization representative shall make a good faith attempt to reach an understanding concerning said contracting, but, if no understanding is reached, the Company may nevertheless proceed with said contracting and the organization may file and progress claims in connection therewith."

The Organization argued that Carrier never notified the General Chairman of its plans to use the outside contractor to renew the two (2) buildings and its failure to do so violated this mandatory requirement. It cited numerous Division Awards to support its position. (See Third Division Awards 19552, 19635, 19899, 20158, 20895, 20945, 23928, 24173, 24621, et al). Furthermore, with respect to Carrier's arguments that said work was never assigned by rule or practice to any particular class or craft of employees, the Organization asserted that the instant claims do not reflect a class and craft dispute, but instead center on Carrier's notification obligation under the Scope Rule. In essence, the Organization averred that said work was performed by BMWE employees as of the effective date of the extant Agreement and was effectively encompassed within the Scope Rule. It alsºo asserted that Claimants were entitled to perform such work, since as furloughed employees, Carrier could have recalled them pursuant to Sections 3 and 4 of Rule 3.

Carrier maintained that the Scope Rule does not reserve demolition work to employees of the BMWE craft and thus the claims must fail for lack of Agreement support. It argued that it was not required to give prior notification. It contended that such work was historically performed by outside contractors at various locations across Carrier's property and cited several examples to substantiate this contention. It also noted that notwithstanding the Organization's reference to a position advertisement on the Youngstown Division, wherein the duties of two (2) advertised B & B Mechanic positions included dismantling of structures, said advertisements were not dispositive,

since the positions were located at a specific location. In effect, it asserted that an advertisement, and in this case of limited application, does not convey an exclusive right to the work involved. It cited several Division Awards to affirm its point (See Third Division Awards 13195, 16544, 17064, et al).

In our review of this case, we concur with Carrier's position. Basically, what is at issue herein is whether the disputed work was traditionally and customarily performed by BMWE forces. To be sure, the Organization has developed illustrations and arguments to buttress its primary contentions but we are not convinced.

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 23rd day of November 1988.