

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

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

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

(1) The Carrier violated the Agreement when it assigned outside forces (Welsh Wrecking Company) to dismantle and remove the second and third floor of Building 'B' at 20th Street Yard from February 20 to April 20, 1984 (System Docket CR-1120).

(2) The Carrier also violated the Agreement when it did not give the General Chairman advance written notice of its intention to contract out said work.

(3) As a consequence of the aforesaid violation, B&B Foreman R. N. Williams shall be allowed three hundred sixty (360) hours of pay at his straight time rate."

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 employes 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.

This dispute arose after an outside contractor demolished the second and third floors of a brick and concrete building at the Carrier's 20th Street Yard. The Organization alleged that said work was within the Scope of its Agreement and Carrier's use of the Welsh Wrecking Company without proper notice to the General Chairman was violative of the Agreement.

It is the Organization's position that the Scope Rule includes "work which, as of the effective date of this Agreement, was being performed by these employees." In its October 26, 1984, letter the Organization includes three addendum. The first addendum lists offices and buildings demolished by Maintenance of Way employees prior to the effective date of the Agreement.

Also included is a statement that the employees were able to do the disputed work and a position advertisement for B&B Mechanics stating that a qualified applicant must be able to dismantle structures of concrete and masonry. These form the core of the Organization's substantive evidence.

The Carrier denies that said work was "exclusively" assigned to the Organization. As such, Carrier maintains that no notification was necessary as no violation of Agreement Rules occurred. As demolition is not assigned by Rule or practice to any craft and not listed in the Scope Rule of the Agreement, Carrier was not required to notify the Organization prior to contracting out.

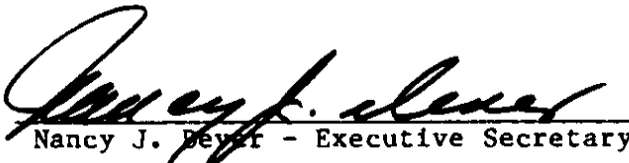
The burden of proof lies with the Organization to support its contentions (Third Division Awards 24508, 26711). This Board's review of the facts and circumstances in the instant case fails to support the Organization's position. A search of the record finds that the work is not specifically covered by the language of the Scope Rule. When not explicitly granted by Agreement, the Organization must show proof that the work was customarily and traditionally performed by the employees (Third Division Awards 23423, 26084). Statements to that effect as well as the advertisement are not proof. The August 20, 1984, list of buildings demolished gives no evidence that the type of work herein disputed was ever performed by the employees. Such prior demolition work entered in the record is insufficient to establish the employees' rights to the contested work. For this Board to award such work to the employees would be to assume similarity and engage in speculation. From the uncontested evidence of record the past dismantling and demolition of track, scale and tool houses, as well as sheds, towers and bridges does not establish the right of the employees to the demolition work contested herein. This demolition work required a wrecking crane and consisted of a multi-storied building. Carrier's failure to notify the Organization under these facts and circumstances did not constitute a violation of the Agreement.

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.