

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

PARTIES TO DISPUTE: (Transportation Communications International Union
(
(Bessemer and Lake Erie Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-10237) that:

1. Carrier violated the effective agreement when, on September 16, 1986, a day on which no Janitors were assigned, it utilized the services of outsiders to perform work involving moving furniture from one location to another in its General Office Building, which work is reserved to employees covered by said agreement:

2. Carrier shall now compensate the two (2) senior off-duty Janitors eight (8) hours' pay at the time and one-half rate each for the above date."

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.

On September 27, 1986, Carrier utilized the services of an outside contractor to relocate ten (10) offices and two (2) computer rooms in Carrier's C&S (Accounting) Department located in the Monroeville General Office Building. A claim was filed on November 24, 1986, wherein the Organization charged that Carrier violated Rule 1 (Scope Rule) of the Agreement. Specifically, the Organization contended that since the Scope Rule unanimously covered positions and work and since the work of moving furniture was routinely performed by Janitors, the movement of furniture on September 27, 1986, constituted a blatant violation of Rule 1. Further, it asserted that since the work was performed on a day not part of any Janitor's assignment, Carrier violated Rule 4, by failing to call the regular employees to perform said work. It acknowledged that Carrier has on occasion used outside contractors and management personnel to perform such work, but quickly pointed out that it challenged these assignments and filed claims.

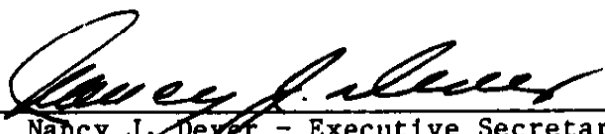
In response, Carrier argued that historically outside contractors have been used to move furniture between geographical locations and within buildings and observed that at the various office buildings of Carrier located in Greenville, Pennsylvania, the Maintenance of Way Department employees were often used to move furniture, although janitors covered by the Clerk's Agreement performed the janitorial duties in these buildings. It asserted that the Organization cannot establish that said work was traditionally performed by janitors to the practical exclusion of other employees and outside contractors and cannot establish any definable practice of exclusivity. It admitted, however, that janitors moved furniture in the Monroeville office, but normally when the move involved one or two offices.

In considering this case, the Board concurs with Carrier's position. While there is evidence that janitors occasionally moved furniture, there is indisputable evidence that outside contractors and Maintenance of Way forces also moved furniture. To be sure, the Organization is correct that work traditionally performed by clerks under the Agreement's Scope Rule would usually be protected work, but a showing must be made that it was routinely performed by covered employees. We have no verifiable evidence that claims were filed challenging the utilization of outside contractors or employees of other crafts nor evidence via other arbitration awards that said work was invariably considered janitor's work under a Clerk's Agreement. As the moving party, the petitioning Organization has to show that the performance of a disputed task was implicitly intended to be protected work and this requires the proffering of proof that the contracting parties intended to exclude others from performing said task. Upon the record, we have no such evidence.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 21st day of June 1990.