

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 29932
Docket No. MW-29693
93-3-91-3-38

The Third Division consisted of the regular members and in addition Referee Charlotte Gold when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
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(Terminal Railroad Association of St. Louis

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

- (1) The Carrier violated the Agreement when it assigned outside forces (Overhead Door Company) to remove and replace a door at the switchman's building on or about December 1, 1989 (System File 1989-16/013-293-14).
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with advance written notice of its intention to contract out said work.
- (3) As a consequence of the violations in Parts (1) and/or (2) above, Mr. L. Gann shall be allowed eight (8) 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 employe 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.

As Third Party in Interest, the Sheet Metal Workers' International Association was advised of the pendency of this dispute and filed a Submission with the Board.

On December 1, 1989, Carrier contracted out the removal and replacement of a wooden door in a brick building in Madison Yard. Prior to doing so, it gave notice to the Sheet Metal Workers. The Organization argues that the work in question was routine B&B maintenance work and that Carrier erred in failing to give it proper notice of its intent to subcontract. In support of its position, it points to a Letter of Understanding between the Organization and Sheet Metal Workers, dated August 1, 1982, in which it was agreed that, henceforth, in return for allowing pipe fitters to drive B&B Truck B58, B&B forces would be responsible for the maintenance on sheet metal and all metal buildings--with the exception of steel windows and doors in sheet metal and/or all metal buildings. As noted by the Organization in its submission, it recognized the latter to be the work of Sheet Metal Workers.

The Organization argues in effect that since only steel doors and windows in sheet metal or metal buildings were mentioned in this Agreement, one must assume that maintenance work in conjunction with steel doors and windows in nonsheet metal or nonsteel buildings accrues to B&B forces. This Board does not accept that logic. It is far more logical to assume that in exempting steel doors and steel windows even in metal structures, the Sheet Metal Workers were steadfastly averring that this was their work in general. (And that in fact is that Organization's position as a third party to this dispute.) The presence of Third Division Award 14419, dated May 12, 1966, involving the same parties, supports this conclusion. The Board in that instance recognized that there had been a past history of assigning work on fire doors to Sheet Metal Workers.

The Board finds no violation of the Agreement. Carrier raised a procedural question about the timeliness of the Organization's appeal, but the Board sees no basis for concluding that a lapse occurred.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 2nd day of December 1993.