

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30670
Docket No. MW-29823
95-3-91-3-184

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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(Elgin, Joliet and Eastern Railway
(Company

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

- (1) The Agreement was violated when the Carrier used an outside concern (Nelson Bros.) to install corrugated fiberglass panels on the Steel Car Shop beginning on July 12, 1989 (System File BJ-15-89/UM-37-89).
- (2) As a consequence of the violation referred to in Part (1) hereof, B&B employees T. Legner, O. Salaiz and M. Clinton shall each be allowed compensation at their time and one-half overtime rates of pay for an equal proportionate share of the total number of man-hours expended by the outside concern."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 Organization argues that the work of installing corrugated fiberglass panels (overglaze) on the upper level of the Steel Car Shop that was begun on July 12, 1989, by outside forces is work of the character that is contractually reserved to Carrier's B&B forces under Rule 2 of the parties' Agreement:

"CLASSIFICATION OF WORK RULES

Rule 2 - Bridge and Building Sub-Department

- (a) All work of construction, maintenance, repair or dismantling of buildings, bridges, including tie renewals on open deck bridges, tunnels, wharves, docks, coal chutes, smoke stacks and other structures built of brick, tile, concrete, stone, wood or steel, cinder pit cranes, turntables and platforms, highway crossings and walks, but not the dismantling and replacing of highway crossings and walks in connection with resurfacing of tracks, signs and similar structures, as well as all appurtenances thereto, loading, unloading and handling all kinds of bridge and building material, shall be bridge and building work.

* * *

- (d) An employe skilled in and assigned to the construction, repairing or maintenance of buildings, bridges and other structures including the building of concrete forms, erecting falsework, setting of columns, beams, girders, trusses and in the general constructional erecting of steel bridges and buildings, and in the performance of related bridge and building iron work, such as riveting and rivet heating, or who is assigned to miscellaneous mechanic's work of this nature in bridge and building department shall constitute a bridge and building carpenter. Shop carpenter work shall consist of building and maintaining various office furniture, all millwork and other fine cabinet work coming under the jurisdiction of the Division Engineer, and employes assigned to and performing such work shall receive six (6) cents per hour in excess of the highest rate received by carpenters at the point employed.

* * *

- (j) All work described under Rule 2 shall be performed by employes of the B&B sub-

department, except as stated in paragraph (f) and as provided by agreement with shop crafts effective April 3, 1922 and Memorandum of Understanding (Supplement No. 1) dated November 8, 1939 (printed below in part for ready reference):..."

The Organization further buttressed its position that the work in question has customarily and historically been performed by its forces by the submission of twelve written statements by B&B employees indicating that they have done similar work.

Carrier cites Rule 6(a) as being applicable to this dispute, in that it allows repair work to be performed by outside contractors:

"Rule 6 - Contracting Out Work

- (a) Memorandum of Understanding (Supplement No. 1) with the shop crafts dated November 8, 1939 (printed here in part for ready reference):

'GENERAL

It is understood where reference is made in this understanding to fabrication of parts of iron, tin, sheet metal or other material or metals, that no such reference shall in any way prohibit the Railway Company from purchasing such parts from outside manufacturers, and that the right of the company to have repair work performed by outside contractors, agencies, etc., is not disturbed.'"

Carrier points out that this was a continuation of a project begun in 1987 by an outside contractor. The work was contracted because all available employees were actively employed.

The Organization counters that Rule 6(b) allows Carrier to contract out work "of such magnitude or intricacy" that cannot be performed by employees covered by the Agreement:

- "(b) Letter of Understanding dated September 28, 1945 'It is agreed that any construction project of such magnitude or intricacy that cannot be performed by employees covered by the agreement, or when city or other ordinances do not permit the work to be done by railroad

employees, may be performed by outside contractors.'" "

The Organization argues that Carrier could have increased its ranks of carpenters to complete the work or the current work force could have been used on an overtime basis.

While this Board is sympathetic to the Organization's interest in preserving work for members of the bargaining unit, we must be guided by the language of the parties' Agreement, as well as practice on the property, in determining whether this project was rightfully contracted out.

Carrier's right to contract out repair work was supported in the Board's interpretation of Rule 6 in Third Division Awards 11103 and 11104. We note from the record that the present project was one of nine window projects contracted out in 1989. (Over the years, there appears to have been a mixed practice of such work being performed by Carrier's B&B forces and outside contractors.) Of the nine projects, the Organization progressed only one other claim.

This Board finds nothing in the parties' Agreement that bars the contracting out of the repair work at issue here. Given existing circumstances at the time, Carrier cannot be said to have acted unreasonably. It provided adequate notice to the General Chairman and acted in accordance with the Agreement.

AWARD

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 31st day of January 1995.