

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30843
Docket No. MW-29338
95-3-90-3-255

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(CSX Transportation, Inc. (former
(Chesapeake and Ohio Railway Company)

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

- (1) The Carrier violated the Agreement when, without notifying the General Chairman or discussing the issue with him as required by Appendix B (October 24, 1957 Letter of Agreement), it assigned outside forces to install carpet in the downstairs offices of the storeroom at Raceland Car Shop on February 18, 19 and 20, 1989 and in the storeroom of the roundhouse office at Russell, Kentucky on March 11, 1989 [System File C-TC-4830/12(89-492) COS].
- (2) As a consequence of the aforesaid violation, B&B Foreman C. Cumpston and B&B Mechanics L. Craig, Jr., J. Cherry, R. Townsend, G. Bragg, W. Young and H. A. Smith shall each be allowed pay at their respective rates for an equal proportionate share of the forty-eight (48) hours expended by the outside forces."

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 claim before the Board asserts the Carrier violated Appendix B when it had carpeting installed by an outside contractor. Appendix B references Rule 83. Respectively, they read as follows:

"Yours of April 30, 1957, subsequent correspondence and conference held at Huntington, W. Va., September 27, 1957, concerning your requests to revise and amend Rules 12 and 83 of the C&O Agreement (Southern Region and Hocking Division) and Rule 59 of the Northern Region Agreement, including employees of the Fort Street Union Depot Company of Detroit and of the Manistee and Northeastern Railway Company.

As explained to you during our conference at Huntington, W. Va., and as you are well aware, it has been the policy of this company to perform all maintenance of way work covered by the Maintenance of Way Agreements with maintenance of way forces except where special equipment was needed, special skills were required, patented processes were used, or when we did not have sufficient qualified forces to perform the work. In each instance where it has been necessary to deviate from this practice in contracting such work, the Railway Company has discussed the matter with you as General Chairman before letting any such work to contract.

We expect to continue this practice in the future and if you agree that this disposes of your request, please so indicate your acceptance in the space provided."

"Rule 83

(b) It is understood and agreed that maintenance work coming under the provisions of this agreement and which has heretofore customarily been performed by employees of the railway company, will not be let to contract if the railway company has available the necessary employees to do the work at the time the project is started, or can secure the necessary employees for doing the work by recalling cut-off employees holding seniority under this agreement. Cut-off employees on a seniority district who will go to other territories to prevent having to contract work hereunder will be considered upon notification in writing to the Manager-Engineering or other corresponding officer of the territory on which the particular employee holds seniority by that employee.

This shall not preclude letting to contract the building of new lines, sidings, and yards; the extension of existing lines, sidings, and yards; the construction of new buildings or other facilities which has customarily been handled by contract in the past; or the doing of maintenance work requiring equipment which the railway company does not have or skill and tools not possessed by workmen covered by this agreement; on the other hand, the railway company will continue its policy of doing construction work with employees covered by this agreement when conditions permit. Where maintenance work coming under the provisions of this agreement which has customarily been performed by employees of the railway company is let to contract, the railway company will place an extra force foreman in charge of the work if the contracted work is roadway or track work. If the contracted work is bridges and structures work, a B&B foreman will be assigned with the contract force if the job is such as would justify assignment of a foreman if the railway company were doing the work with its own forces. If the contracted bridges and structures work is such that a carpenter would be used if the work were being done with railway company forces, a carpenter will be assigned. If painting work is contracted, a foreman will be used."

To prevail under the relevant Rules, the Organization, as a threshold matter, must establish that the work in question has customarily been performed by Carrier forces.

The Board has reviewed the on-the-property correspondence. Of course, this is necessary and appropriate because the exchange between the Parties, prior to appeal, defines the parameters of the evidence and arguments that can properly be raised before the Board. Two matters of material significance must be noted. First, the Organization never asserted or produced any evidence on the property that the work in question has been customarily performed by the bargaining unit employees. Second, it is noted that there was no rebuttal by the Organization to the following statement offered by the Carrier in its final declination:

"As you well know, the installation of carpet is not work which is exclusively assigned to B&B employees. The installation was part of the purchase price of the carpet and we have historically purchased carpet in this manner and had the vendor install same as part of the purchase price. In fact, about 1 and 1/2 years ago, you

progressed several claims to this office involving the installation of carpet in the Huntington Division office. Those claims were declined and you did not progress them further."

Given the state of the record, the Board must find that the elements necessary to sustain the claim are not present. Accordingly, we have no choice but to deny the claim.

AWARD

Claim denied.

ORDER

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 27th day of April 1995.