Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 30867
Docket No. MW-30610
95-3-92-3-318

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
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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 assigned an outside concern (P.T. Ferro) to perform Bridge and Building Subdepartment work (lay pipe for city water) at the Joliet yard beginning on July 16, 1990 (System File SAC-17&18-90/UM-19-90&WM-18-90).

(2) As a consequence of the violation referred to in Part (1) above, B&B Water Service Foreman F. Mau, B&B Water Service Mechanics G. Grencik and R. Vironda, B&B Crane Operator G. Haggerty and Work Equipment Truck Driver K.L. DeCamp shall each be allowed compensation at their respective 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.

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The underlying facts of this claim are essentially undisputed. On March 27, 1989, Carrier served written notice of its intent to contract out various portions of its 1989 Construction Project on the Joliet and Gary Divisions, including the renewal of the water distribution system in the Joliet yard. As a result of a conference requested by the Organization, Carrier assigned Bridge & Building Department employees to perform the bulk of the water pipe laying functions associated with this project. Carrier forces commenced running the segment of pipe from the car shop to the north end yard office in the Fall, 1989. In January, 1990, a contractor completed a tap on to the city water main and installation of a shutoff valve. By May 30, 1990 purchase order, P. T. Ferro Construction company was contracted to install approximately 700 feet of pipe from the tap at the city water main, under Draper Avenue, to the water meters located in the car shop which had been installed in 1988. The record reflects that between July 16 and August 7, 1990, the contractor expended 208 hours performing this function as well as installing a fire hydrant. It is this work that is the subject of the instant claim.

The Organization contends that this work is specifically covered by Scope Rule 2 (a), (e) and (j), and that the exceptions permitting contracting listed in Rule 6 (a) and (b) do not apply since this is not "repair" work or a project of such magnitude and intricacy. The Organization avers that claimants worked only 14 percent of their potential hours on this project during the claim period, and could have worked on overtime or during rest days, or been reassigned, necessitating a finding of lost work opportunity and the monetary relief requested.

Carrier contends that the contracted work was a small part of a three year project, during which Organization employees performed 74 percent of the repiping of the Joliet water system and conversion to city water. Carrier states that it was within its rights to contract this work under Rule 6 and the Memorandum of Understanding (Supplement No. 1) with the shop crafts dated November 8, 1939 permitting it to contract out repair work. Carrier argues that Rule 58 of the Agreement restricts time claims to actual pecuniary loss to the Claimants, who were fully employed during the claim period, and that no monetary relief would be appropriate under any circumstances.

There is no real dispute between the parties that the work in question is encompassed within the Scope provisions contained in Article 2 of the Agreement. What is disputed is whether the exceptions noted in Rule 6 and the Memorandum of Understanding apply. To resolve this dispute, we must determine whether the work herein involved can properly be classified as "repair work" within the meaning those provisions.

A review of the project proposal which explains the intention to renew the existing water distribution system in Joliet yard which was in excess of 40 years old, states that it will be accomplished over 3 years by the installation of properly sized plastic piping and the elimination of large sections of the system which serve abandoned facilities, and conversion to city water. Other Carrier documents clearly describe the pertinent work, not as repair work, but as the installation of a new water system. It appears that the old water distribution system was abandoned, and that no repairs were made to the existing system. Rather, water service mechanics excavated new trenches and installed all new water pipe on the sections of the project they worked on. There is nothing in the record to differentiate the work performed by the contractor in this case from the work performed by Carrier's water service mechanics on the sections of water pipe line that they laid.

We find that the claimed work clearly fell within "... the installation ... [of] water ... pipelines...." reserved to water service mechanics under Scope Rule 2, and was not "repair" work within the language of the Memorandum of Understanding and Rule 6(a) of the Agreement. Thus, this case is significantly different from the tuckpointing, sandblasting and cleaning work involved in Award 11103, or the replacement of a thermopane type window involved in Award 11104, relied upon by the Carrier. Similarly, this case is distinguishable from Awards 29224 and 29225, wherein the Organization did not refute Carrier's defense that the roofing work in question was repair work covered by the Memorandum of Understanding.

Neither has the Carrier proven that the project was of such magnitude or intricacy that it could not have been performed by Carrier's employees over the three year time period set aside for its completion. There was no showing why contractor's employees were required to lay this specific section of pipe, when many hours were spent by water service mechanics laying similar pipe elsewhere. Since neither exception encompassed within Rule 6 is applicable, we hold that Carrier violated the Agreement by contracting out the disputed work. See Third Division Award 17224.

In ascertaining the appropriate remedy, we are not convinced that Rule 58 bars a monetary award. See Third Division Awards 30411, 30035. Carrier admitted that when Claimants were not assigned to work on this project, they were assigned elsewhere, and there is no contest to the Organization's claim that only a small portion of their potential hours during the claim period were assigned to this project. Despite the fact that they were fully employed, there has been no showing that the laying of this specific pipe could not have been accomplished on overtime, during rest days or at another time. We conclude that this case represents a lost work opportunity for Claimants requiring monetary compensation at the straight time rate.

AWARD

Claim sustained in accordance with the Findings.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders than Award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 10th day of May 1995.