

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31667
Docket No. MW-31215
96-3-93-3-199**

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

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Atchison Topeka and Santa Fe 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 to perform B&B Subdepartment work (remodeling the Mechanical Building) at Dodge City, Kansas beginning on March 25, 1991 and continuing (System File 50-A8-9153/910110117).**
- (2) The Agreement was further violated when Carrier assigned an outside concern to perform B&B Subdepartment work (painting the interior and exterior) on the Trainman's Locker Room Building at Wellington, Kansas beginning on March 25, 1991 and continuing (System File 70-A8-9135/910110118).**
- (3) As a consequence of the violation referred to in Part (1) above, furloughed B&B employees G.E. Williams, D.W. Maddox, G.L. Harvey, J.W. Steele, O.D. Vannocker and R.K. Robertson shall each be allowed an equal proportionate share of the total number of man-hours expended by the contractor's employees performing the above-described work from March 25, 1991 and continuing.**
- (4) As a consequence of the violation referred to in Part (2) above, furloughed B&B employees C.G. Caudillo, M.M. Moreno and L.G. Boham shall each be allowed one hundred twenty-five (125) hours' pay at their respective straight time rates."**

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.

On March 7, 1991, the Carrier notified the Organization of its intent to contract out the work of remodeling the mechanical building at Dodge City, Kansas, and the trainman's locker room at Wellington, Kansas. On March 14, 1991 a conference was held concerning the notices. In April 1991, an outside contractor performed the work in question.

On May 13, 1991, the Organization filed the claims that are now before this Board. The Carrier denied the claims on July 11, 1991. In that letter the Carrier suspended the time limit until the cases were discussed in conference. The claims were discussed in conference on June 16, 1992, with the declinations being affirmed. On July 2, 1992, the conference was confirmed in writing.

The Carrier argues that the claims were not timely filed to this Board. It avers the conference was held on June 16, 1992, and the Organization had until March 16, 1993, to initiate proceedings to this Board. The Organization did not begin proceedings until April 1, 1993.

A review of the record reveals that all of the words concerning the suspension of time limits were written by the Carrier. The record is void of any acknowledgment by the Organization. The Carrier has not furnished any evidence that this is common practice and the Organization was aware of what the Carrier meant. The Organization began proceedings within 9 months of the letter confirming conference. The Board will reject the Carrier's time limit argument.

As to the merits of the case, the Organization has the burden to prove the Agreement was violated. It argues the Carrier violated Rule 1, The Scope Rule, of the Agreement. The Carrier argues that the Scope Rule is general in nature and that it has historically contracted out work of this nature. The Carrier has supplied the Organization with a significant list of the contracting out of similar work. The Organization has not refuted this evidence.

The Board finds the Carrier gave proper notice of its intent to contract out the work involved in these claims. The Board also finds that the Organization has failed to meet its burden that Rule 1 was violated.

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 29th day of August 1996.