

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31866
Docket No. MW-30809
97-3-92-3-643

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

(Brotherhood of Maintenance of Way Employees

PARTIES TO DISPUTE: (

(Consolidated Rail Corporation

STATEMENT OF CLAIM:

- "(1) The Agreement was violated when the Carrier assigned outside forces (Brian Bedford Roofing Company) to perform Bridge and Building Subdepartment work (roof repairs) at the Conrail Repair Shop, Easton, Pennsylvania on the Philadelphia Division beginning January 15, 1991 and continuing. (System Docket MW-1966)
- (2) The Agreement was further violated when the Carrier failed to give the General Chairman prior written notification of its intent to contract out said work to outside forces as required by the Scope Rule and by its failure to assert a 'good faith' effort to reduce such subcontracting as stipulated within the December 11, 1981 Letter of Agreement.
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, B&B Foreman D. Brulia and B&B Mechanics F. Hernandez, G. Sanchez, G. Sell and S. Takacs shall each be compensated at their respective straight time and time and one-half rates of pay for an equal proportionate share of the total number of man-hours expended by the outside forces performing said work and Claimant Hernandez shall receive all benefits and credits for vacation in connection therewith."

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 were given due notice of hearing thereon.

Claimant B. Brulia has established and holds seniority as a B&B Foreman. Claimants Hernandez, Sanchez, Sell and Takacs are B&B Mechanics. Each of the Claimants held regular assignments in their respective classifications on the Philadelphia Division, however Claimant Hernandez was furloughed from Carrier's service at the time this dispute arose.

In a letter dated October 25, 1990, Carrier gave the Organization notice of its intention to contract out the installation of galvanized roof on the repair shop in Easton, PA. The work commenced on January 15, 1991, and continued on four additional days to complete the project. On January 17, 1991, the Organization filed a claim alleging a violation of the Scope Rule and the December 11, 1981 Letter of Agreement. In addition to monetary damages on behalf of Messrs. Brulia, Sanchez, Sell and Takacs, the Organization also claimed credits for vacation, S.U.B. benefits and insurance coverage for Claimant Hernandez.

Carrier denied the claim, and in an appeal letter dated March 8, 1991, the claim was progressed to Carrier Manager-Labor Relations. Subsequent to a April 11, 1991 conference, the Manager denied the claim on grounds that the work in dispute was "not repair work as envisioned by the agreement" and asserting that Carrier's forces "lacked the expertise" to do the work.

In its reply to Carrier's denial, the Organization alleged:

"The claimants are qualified to perform this work in question and the Organization will submit statements to support this claim.

However, if the claimants were not qualified to perform this work, which they are, this would not give Conrail the right to contract out M/W work. The Organization is requesting Conrail to specify what rule in the current

BMWE Agreement that allows Conrail to freely contract out M/W work. It is up to the carrier to have lower management (supervision) that are fully qualified in performing the work they are to supervise. It is obvious that the current B&B supervision assigned to this area cannot perform the task of simple roof installation. The BMWE employees should not lose work opportunities to unqualified management. In this case, Conrail should have hired a supervisor from Bedford's Contracting that can properly supervise the M/W employees in performing this type of work. Again, this is a classic example of Conrail management not being qualified to perform the tasks for which they are being paid to perform."

In a letter dated November 13, 1991, Carrier reiterated that Claimants were "not qualified" for the work in question and asserted that "this type of roof has never been installed on the Division." Carrier challenged the Organization to submit "verifiable evidence" in support of its position. The Organization ultimately submitted a statement from Claimants Brulia and Sell asserting that roofs "similar" to the one in dispute "were done in 1976 under the supervision of Structural Supervisor J. Herman."

As in all Scope Rule claims, it is imperative to focus precisely and specifically upon the work in dispute: in this case the installation of a new galvanized steel roof on a Carrier-owned building. Given the unique language of this particular Scope Rule, the Organization meets its burden of proving work reservation by convincing evidence of a custom, practice and tradition of performance of this work by Agreement-covered employees and/or actual performance on the effective date of the 1982 Conrail/BMWE Agreement. See Third Division Awards 30515, 30100.

The work involved in this dispute is not expressly reserved by the language of the Scope Rule. Equivocal statements submitted by two of the Claimants are inadequate to convincingly carry the burden of proving a mutually recognized custom, practice or tradition of reserved performance of the disputed work or actual performance on the Agreement's effective date, by Agreement-covered employees. Based on the record, this claim must be denied.

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 4th day of March 1997.