

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32271
Docket No. MW-31616
97-3-93-3-626**

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

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Elgin, Joliet & Eastern Railway Company**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned outside forces to perform Bridge and Building Subdepartment work (repair roof) on the Gary Division, Kirk Yard Roundhouse beginning May 12, 1992 and continuing (System File BG-666-92/TM-20-92).**
- (2) As a consequence of the violation referred to in Part (1) above, B&B Carpenter Foreman A. B. Pace and B&B Carpenters R. H. Olivencia, D. T. Cassidy, G. A. Pluta, A. J. Pluta, J. Guzman and J. L. Budzevski shall each be allowed compensation at their respective time and one-half rates of pay for an equal proportionate share of the total number of man-hours expended by the outside forces in the performance of the Bridge and Building Subdepartment work.”**

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.

The parties being unable to resolve the issues at hand, this matter came before this Board.

On May 12, 1992, the Carrier hired an outside contractor to repair the roof on the Kirk Yard Roundhouse.

The Organization filed the instant claim arguing that roofing work has customarily and historically been performed by B&B Subdepartment employees in the past. Furthermore, the Organization contends that the Claimants were willing and able to perform the work during regular work hours, on overtime or on weekend rest days, had the Carrier given them the opportunity to do so.

The Carrier denied this claim arguing that the spray foam coating work in question here was part of a multi-year roofing project that began in 1988 (Phase 1) and ran through 1992 (Phase 5). The Carrier points to a similar claim that was made regarding Phase 2, that decision was held in abeyance until the ruling was received in another case involving the spray foam coating of the Joliet truck garage. The referee denied the Joliet claim stating that the Carrier had the right to contract out roof repairs. The Carrier points out that since the Joliet claim was denied, the Phase 2 claim was denied. Therefore, the Carrier asserts that a decision has already been rendered with respect to the roofing work in question here and this claim should be denied.

The parties being unable to resolve the issues at hand, this matter came before this Board.

This Board has reviewed the record in this case and we find that this issue has already been raised in two previous cases and in both of them, this Board found that the Carrier has the right to contract out repair work, particularly the work of spray foam coating of roofs. See Third Division Awards 29224 and 29225.

The Carrier has also listed a number of other Awards which also hold that the Carrier retains the right to contract out repair work. For example, see Third Division Awards 30411 and 30670.

Given the record before us, this Board must find that the Organization has failed to meet its burden of proof that the Carrier violated the Agreement when it contracted out the roofing work at issue. Therefore, the 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 7th day of October 1997.