

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32365
Docket No. MW-31105
97-3-93-3-132**

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: (
(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 to perform Bridge and Building Subdepartment work (repair/replacement of windows) on buildings in the Kirk Yard beginning on July 25, 1991 and continuing (System File BG-635-91/TM-26-91).**
- (2) As a consequence of the violation referred to in Part (1) above, the Gary Division Bridge and Building Carpenters shall each be allowed compensation at their respective rates of pay for an equal proportionate share of the total number of man-hours' expended by the outside concern in the performance of the work described in Part (1) above beginning on July 25, 1991 and continuing until the violation ceases."**

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.

This dispute involves two Rules, each of which is unique to this property. Rule 58 states, in pertinent part:

"Time claims shall be confined to the actual pecuniary loss resulting from the alleged violation."

Rule 6, CONTRACTING OUT WORK, states:

"(a) Memorandum of Understanding (Supplement No. 1) with the shop crafts dated November 8, 1939:

'GENERAL

It is understood where reference is made in this understanding to fabrication of parts of iron, tin, sheet metal or other material or metals, that no such reference shall in any way prohibit the Railway Company from purchasing such parts from outside manufacturers, and that the right of the company to have repair work performed by outside contractors, agencies, etc., is not disturbed."

Beginning in the early 1980's, Carrier began downsizing and reorganizing a portion of its property, facilities, and forces. As part of the reorganization program, Carrier instituted a multi-year project of replacing all windows in the Joliet and Gary office buildings. Commencing in 1989, Carrier engaged and utilized an outside contractor, Illinois Sash Erectors, Inc. to perform the window replacement. The last three listed items in the following schedule of work constitute the gravamen of the present dispute:

<u>Year</u>	<u>Number of Windows</u>	<u>Buildings</u>
1989	75	Joliet O&O Bldg. 100
1990	129	Joliet O&O Bldg. 100-200
1990	50	Gary Office Bldg 160
1990	17	West End Yard Office-Gary
1991	40	Gary M of W Bldg.
1991	20	Gary Car-Locomotive Office
1991	59	Gary Main Office

No Scope Rule claims were filed by the Organization relative to the 1989 and 1990 Joliet phase of the window project. A Scope Rule claim was filed for the 50 windows at Gary Office Building 160 in 1990, but was progressed no further after denial on the property by Carrier's highest designated Labor Relations officer.

On May 1, 1991, Carrier notified the Organization that it was proceeding to contract out the third yearly segment of the window replacement program. At the Organization's request, a meeting was held to discuss the above scheduled repairs. Subsequently, Carrier contracted with Illinois Sash Erectors, Inc. to fabricate and install windows in the three Gary buildings. The purchase order covered "the purchase of and installation of Traco replacement windows" (consisting of aluminum window and screen sashes fabricated at the subcontractor's plant) and custom fit window frames, which were field constructed at the job site.

On September 16, 1991, the Organization submitted a claim for the man-hours "consumed by the contractor." The claim stated, in pertinent part:

"Starting on or about July 25, 1991 the Carrier has contracted out the replacement of windows in several buildings in the Kirk Yard area.

Outside contractors have been brought onto the property, and have been taken by the Carrier from building to building to measure windows in most all of the buildings in Kirk Yard, these same contractors then have been brought onto the property new windows and some 7 employees of said contractor for the purpose of installation, these contractor

employees then took out the old windows and replace them with new windows. This type work has been done in the Kirk Yard Camp Building, M of E Department Office Building, Main Office Building just to name a few buildings.

This work, however, is the work of the Maintenance of Way Department, Bridge & Building Carpenters on the Elgin, Joliet & Eastern Railway Company and has been there (sic) work for years and years.

Also, this type work is listed in the controlling agreement as work belonging to the B&B Department Carpenters. Rules 2, 5, 16, 17, 32 and 41 of the controlling agreement in this case has all been overlooked and or violated by the Carrier.

Therefore, the Organization is requesting that and (sic) equal proportional share of man-hour spent by these outside contractors be paid to the Gary Division Bridge & Building Carpenters for the Agreement violations of the Carrier."

Carrier denied the claim, maintaining that the Organization's claim was untimely presented, in view of "acquiescing" on the following:

1. No claim was filed over the 204 windows fabricated and installed in Joliet Office buildings by Illinois Sash in 1989 and 1990.
2. No claim was filed for the 17 windows replaced and installed in Gary West End Yard office in 1991.
3. No claim was filed over the seven smaller buildings that had windows replaced during the years 1989, 1991 and 1992.
4. A claim was submitted for the 50 windows installed in the Gary office building, but, it was not progressed after being declined by the Carrier's highest designated officer to handle claims.

Carrier went on to assert that "in view of the above" this claim was barred in accordance with paragraph (c), Rule 59 "Time Limit on Claims and Grievances Rule."

This claim represents a portion of one of the latter phases of a multi-year project. Even if, arguendo, the Organization's acquiescence in the earlier phase of this window replacement project and abandonment of the earlier identical claim did not undermine its belated claim to the 1990 work, precedent Awards of this Division regarding window replacement work do defeat the claim. See Third Division Awards 31103 and 11104; See also Third Division Awards 29224 and 29225.

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 30th day of December 1997.