

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32395
Docket No. MW-30729
97-3-92-3-527**

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Union Pacific Railroad Company)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned outside forces (Weidner Williams) to install a roof on the Diesel Shop in North Platte, Nebraska beginning March 18, 1991 and continuing (System File S-496/910486).**
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with proper advance written notice of its intention to contract out said work.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, B&B Foreman K. E. Peterson, Machine Operator J. D. Shepard and Carpenters R. K. Hughes, J. P. Nila, J. W. Gurwell, D. T. McIntosh and I. R. Espinosa shall each be allowed pay at their respective rates of pay for an equal proportionate share of the total number of man-hours expended by the contractor's forces beginning March 18, 1991 and continuing until such time 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.

The Carrier served Notice dated October 19, 1990 of its intent to install a roof system and to solicit bids from outside contractors for the work. The Organization provided a lengthy protest which this Board has carefully studied. That protest insisted that the work belonged under the Scope of the Agreement to Bridge and Building Subdepartment employees who had for many years been assigned, and customarily and traditionally performed the disputed work. The Organization throughout this claim argued in addition that it had Agreement support and Award authority that protected this work for the employees. It particularly referred to the requirement of the Carrier to follow the December 11, 1981 letter of a "good-faith" effort to reduce subcontracting. The Organization argued that the work belonged to the employees and was subcontracted without any attempt to allow the employees to provide their labor on work they had previously performed. The Organization maintained that there was no exception provided by Rule 52 which permitted the Carrier to contract out the work. After conference of November 15, 1990, the work was contracted out.

The Carrier argues that the work does not belong to the employees. It argues that the Scope Rule is a general rule and does not specify the work in question. While the Carrier indicates that employees have performed this type of work, it supports its position with a statement from an outside contractor that it has performed the work along with a list of numerous incidences in which outside contractors have performed roofing work for the Carrier. The Carrier further argues that it has Award support for its position. In fact, the specific work was that of installing a special Goodyear Versigard PE roof system which could only be installed by a licensed installer, because Goodyear would not sell it to anyone other than a licensed installer, nor warranty the work unless it was installed by a licensed installer. The Carrier was not licensed and could neither purchase or install the roof. Nevertheless, the Carrier insists that it merely performed work it had historically performed with the use of outside contractors.

This Board has carefully reviewed the full record and all of the issues, Rules and Awards associated herewith. The conclusion of our review is that the Organization's claim must fail. There is sufficient probative evidence of record presented by the Carrier to support prior contracting out of this type of work. The installation of a rubber layered roof at North Platte, Nebraska, to one of the Carrier's buildings is work which has a long history of prior performance by outside contractors. Our conclusion is that this is an issue well settled by past Awards and must therefore be considered res judicata (Third Division Awards: 29802, 30100, 30101, 30690; Public Law Board No. 4219, Award 8).

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.