

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 34149  
Docket No. MW-32710  
00-3-96-3-5**

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

**(Brotherhood of Maintenance of Way Employees  
PARTIES TO DISPUTE: (  
(Burlington Northern 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 (Don’s Floor and Acoustics) to install carpeting in various offices within the Sioux City, Iowa Depot on November 15, 16, 17, 23 and 30, 1993. (System File N-L-158-B/MWB 94-04-15AC).**
- (2) The Agreement was further violated when the Carrier failed to provide the General Chairman with advance written notice of its plans to contract out said work as required by the Note to Rule 55 and Appendix Y.**
- (3) As a consequence of the violations referred to in Parts (1) and/or(2) above, Foreman G. W. Franka, Truck Driver H. C. Payne and First Class Carpenters K. M. Warzecha, D. R. Schoeneman and J. A. Alby shall each be allowed an equal proportionate share of the eighty (80) man-hours consumed by the outside forces performing the above-described 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.

There is no dispute on the fact that the Carrier utilized an outside contractor on November 15, 16, 17, 23 and 30, 1993. The parties agree that on those five dates, Don's Floor and Acoustics installed new carpet at the Sioux City, Iowa Depot. The Organization argues that the Carrier violated the Scope of the Agreement when it contracted out work that belonged to the employees.

On January 10, 1994, the Organization filed a claim for 80 hours pay due to the fact that the work performed was Scope protected and performed by outsiders without prior written notice. The Organization stated that carpet installation was "work which the Claimants have always performed in the past." It further asserted that due to the fact that this was incidental to the duties of a First Class Carpenter, covered under Rule 55 F, its assignment to outsiders violated the notification Note to Rule 55 and Appendix Y. It charges the Carrier violated the Agreement by its failure to notify the General Chairman not less than 15 days prior to contracting out. The Organization argues that it provided sufficient evidence to prove that this work has been customarily, traditionally and historically performed by the employees.

The Carrier disputes the Organization's claim that it is work protected to the Craft by the Scope of the Agreement. It argues that carpet installation has been contracted out system-wide. As the Organization has a general Scope Rule, the Carrier maintains that said work is not included, nor is it thereby protected. As such, the Note to Rule 55 which includes a notification prior to contracting out in those instances where the employees have customarily performed the work is not applicable. The Carrier argues that the work must first be shown to be Scope protected before there is any notification required. In this case, the Organization failed to show Scope work was involved and therefore, notification was not required.

The burden of proof for violations rest with the Organization. It has a very difficult burden of establishing system-wide performance of carpet installation. The Organization produced 13 written statements attesting to carpet installation at some localities. It provided photographs of installation projects and tools that it utilized. If these went unrefuted, the Board might find such to be conclusive. However, the Carrier countered this evidence with the statements of six managers, including S. A. Millsap, presented without denial as the "Engineering executive responsible for B&B work System-wide." Millsap stated that "in most cases the installers were employed by the company from whom we bought the carpet."

The Board concludes from a full review of the Agreement, evidence and facts that the Organization has not carried its burden of proof. The Scope Rule is a general Scope Rule and the Organization must prove that it has customarily performed the work system wide. It failed to do so. The evidence of record does not show that the employees have customarily performed carpet installation system wide. The Carrier's evidence substantiates that most carpet installation was contracted out, with some work performed at limited locations by the employees. As Rule 55 requires notification for "work customarily performed by employees" it is not applicable herein as the Organization must first show the disputed work is within the Scope. For all the foregoing reasons, the Board must deny the claim.

**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 19th day of June, 2000.**