

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35387
Docket No. MW-33832
01-3-97-3-324**

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 Santa Fe Railway (former St. Louis-
(San Francisco 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 (Borden Construction) to perform Bridge and Building Subdepartment work (pouring concrete for manholes and drainage ditches) at Birmingham Yard, Birmingham, Alabama beginning September 5, 1995 and continuing (system File B-2596-1/MWC 95-10-23AA SLF).**
- (2) As a consequence of the violation referred to in Part (1) above, Messrs. R. A. Smith, B. E. Colburn, D. R. Carter, J. M. Tucker, J. E. Short and R. B. Tribble shall each be compensated at their respective 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 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.

As Third Party in Interest, the Sheet Metal Workers' International Association was advised of the pendency of this dispute and chose to file a Submission with the Board.

Proper notice and discussion commenced on the property over the contracting out of work that the Carrier maintained was not within the Scope of the Agreement. There is no dispute that an outside contractor performed work that included the pouring of concrete for manholes and drainage ditches at the Intermodal Hub expansion at Birmingham, Alabama. This work was a part of the storm sewer installation and geotextile placement that had been discussed on July 7, 1995. The Carrier held that the Organization had agreed thereto. The Organization pursued its claim to the work in question.

It is the position of the Organization that its BMW-represented employees were entitled to the work of pouring concrete for manholes and drainage ditches and were denied their rights thereto. In discussions on property, the Organization asserted that the work claimed was historically and traditionally performed by B&B forces. It argued that although properly conferenced and notified, the Organization did not agree to allow an outside contractor to do this work. It presented evidence from both Claimants that the work disputed had been previously performed by B&B employees.

The Carrier asserted a number of defenses. It argued that the work was not covered by the Scope of the Agreement. It maintained that it was not required to piecemeal an entire expansion project, of which this was only eleven percent of the entire work contracted. It took issue with the statements presented from the Claimants and provided letters in rebuttal. The Carrier further argued that because those letters indicated that the Sheet Metal Workers performed the same work, this proved not only the lack of reservation of the work to the Organization, but also the requirement for Third Party Notice. The Carrier denied any violation whatsoever.

The Sheet Metal Workers advised that its Agreement protects its work. It suggests that the Board pay attention to the evidence of record and full Agreement provisions in rendering its decision.

The Board studied the record with the following conclusions. The Organization failed to prove its burden. The Scope Rule is a general Rule and there is insufficient evidence of record that the employees have customarily performed this work. The Organization's proof does not provide detail sufficient to reach a conclusion of a violation. At best, it indicates in general that "most" of the ditches and manholes were installed by B&B gangs. However, the Carrier proffered several letters that are not refuted. They state that several other crafts have performed the same work at issue herein. They clearly state that "contractors, waterservice, b&b, trackmen, and even signal maintainers [are] involved with this type of work." The record of evidence does not support a violation of the Rules in the claim at bar.

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 20th day of March, 2001.