

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36016
Docket No. MW-33774
02-3-97-3-247**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: (**(Brotherhood of Maintenance of Way Employees
(Indiana Harbor Belt 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 (Davis Roofing) to install a steel roof on the Blue Island Agent’s Office on February 15 through 26, 1996 (Carrier’s Files MW-96-014 and MW-96-015).**
- (2) As a consequence of the violation referred to in Part (1) above, Foreman D. Majeski and Carpenters K. Lorenz and A. Razo shall each be allowed forty-eight (48) hours’ pay at their respective straight time rates and thirty-two (32) hours’ pay at their respective time and one-half rates for the work performed by the outside forces on February 15, 16, 17, 19, 20, 21, 22 and 23, 1996.**
- (3) Also as a consequence of the violation referred to in Part (1) above, Carpenters P. Davis and R. E. Hamende shall each be allowed fifty-two (52) hours’ pay at their respective straight time rate and ten and one-half (10.5) hours’ pay at their respective time and one-half rates for the work performed by the outside forces on February 15, 16, 19, 20, 21, 22, 23 and 26, 1996.”**

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.

By notice dated November 13, 1995, the Carrier informed the Organization of its intent to contract out the installation of a new steel roof over the concrete roof on the Blue Island Agent's office. According to the Carrier's notice:

"Our interest, as in the past on similar projects, is to use Carrier employees and equipment as much as possible; however, due to the working height, the Carrier does not have the proper equipment, training or expertise to safely complete this job. . . ."

By letter dated November 16, 1995, the Organization objected to the contracting stating that "[w]e believe that all of the work could easily be performed by M/W forces."

In denying the claim, the Carrier asserted by letter dated May 31, 1996 that it used a contractor ". . . as the Carrier did not have the proper equipment, training or expertise to safely complete this job due to the working height."

In another denial letter dated June 27, 1996, the Carrier asserted that:

". . . [T]hey [covered employees] could not have performed the job safely on their own. The presence of the experienced and properly equipped contractor allowed the participation of your members without risk to limb or paycheck. . . ."

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. . . When the skill levels of the incumbents is non-existent with regard to the work to be performed, the Carrier can do little more than hire a contractor. . . ."

By letter dated May 11, 1996, the Carrier again asserted that it "... did not have the proper equipment, training or expertise to safely complete this job due to the working height."

By letter dated June 27, 1996, the Carrier stated "... that the recalcitrance of your members with regard to learning is beyond doubt."

By letter dated February 21, 1997 (which was not included in the Carrier's developed record of the correspondence on the property), the Organization's Lodge President stated:

"I am responding to your letter regarding special equipment used by Davis Roofing during the installation of the new roof. No special equipment was used by Davis Roofing during this process. They used cordless drills and a high lift machine, which they rented from S & R Rental.

The IHB owns four cordless drills. We also have credit with S & R Rental, 930 W. 138th St., Riverdale, IL. Our Rental Manager is Sue Kenley. S & R Rental is located only a mile away from our yard. We had, in fact, rented this same machine from S & R Rental last year when the Bridge and Building department was instructed to patch the roof. At that time they were also told they would be replacing the roof at a later date. The B & B Department is also equipped with fall protection.

There was no special equipment used. . . ."

As set forth in the above quoted correspondence, the Carrier defended the claim on the grounds that it did not have the equipment and the employees did not have the training or expertise to safely complete a dangerous job. However, aside from general assertions made by the Carrier, there are no accompanying factual showings to support those contentions. There simply is no evidence produced by the Carrier in this record for us to find that the work was so dangerous that it could not be safely performed by covered employees and that specialized equipment was needed and could not be obtained. When consideration is given to the Organization's February 21, 1997 letter which shows that no special equipment was used and that covered employees performed similar work in the past with the same equipment owned by the Carrier along with the

same rented equipment used by the contractor, we must find that the Carrier's affirmative defense fails.

The fact that covered employees may also have worked on the project along with the contractor's forces does not change the result. By not being allowed to perform the work given to the contractor, the Claimants lost potential work/overtime opportunities. The Claimants must be made whole for those lost opportunities. The Claimants shall be compensated at the appropriate contract rate based upon the number of hours the contractor's employees performed the work. The dispute is remanded to the parties to determine those hours.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 21st day of May, 2002.