

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36287
Docket No. MW-35585
02-3-99-3-502

The Third Division consisted of the regular members and in addition Referee Richard Mittenthal when award was rendered.

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employees
(Burlington Northern Santa Fe Railway
((former Fort Worth and Denver Railway)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned outside forces (Messer Construction Company) to perform Bridge and Building Subdepartment work (interior building remodeling) in the depot at Amarillo, Texas beginning March 16, 1998 and continuing (System File F-98-07C/MWD 98-08-12AA FWD).
- (2) As a consequence of the violation referred to in Part (1) above, B & B Foreman A.C. Thorn, B & B Carpenters L. E. Shoffner, R. E. Kindle, D. R. Wiseman and B & B Helpers L. A. Brown and C. J. Rodriquez shall ‘ . . . now be compensated an equal and proportionate share of all straight time and overtime hours (if applicable) worked by Messer Construction Co. employees on this project commencing from March 16, 1998, and continuing until such time as 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.

In order to comply with federal ADA standards, the Carrier had to remodel its Yard office in Amarillo, Texas. It engaged a contractor to perform the work which included, among other things, tearing down walls, enlarging a bathroom, putting in bigger doors, and installing ramps and rails for wheelchair access. Notice of the contracting out was given to the General Chairman. The contractor apparently began work on March 16, 1998.

Bridge & Building Subdepartment employees complained that they should have been assigned to this work. They protested the contracting out.

The Scope Rule does not bar the use of contractors in this situation. Nor indeed does the record show that this kind of office remodeling work has been exclusively reserved to employees by practice or tradition. The Organization has not met its burden of proof on this issue. And it does not appear that this office structure was located on the right-of-way. For these reasons, the claim lacks merit.

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 28th day of October 2002.