

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36596
Docket No. MW-35463
03-3-99-3-343

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 Employes
(Union Pacific Railroad Company (formerly The Denver
(and Rio Grande Western 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 (Marcus Construction Co.) to perform Maintenance of Way work (office remodeling) in the battery room at the East Yard Tower Building at Grand Junction, Colorado beginning January 8, 1998 and continuing (System File D-98-10C/1130524 DRG).**
- (2) The Agreement was further violated when the Carrier failed to meet with the General Chairman regarding its intent to contract out the work in Part (1) above as required by Appendix D of the Agreement.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants W. V. Bergamo, L. W. Cady and G. W. Wallace shall ‘... now be compensated an equal and proportionate share of all hours worked by Marcus Construction Co. employees on this project commencing from January 8, 1998, and continuing until 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 January 1998, the Carrier contracted with Marcus Construction Company to remodel the battery room. The remodeling was instituted to provide office space for section forces, welders, the Manager Track Maintenance and other personnel working in Grand Junction, Colorado. The remodeling was performed at the East Yard Tower Building. The record indicates that the Carrier properly provided a notice to the Organization about its intent to contract out the work. The work was performed by the outside contractor and the Organization alleged it was work historically and customarily performed by the employees and covered by the Scope Rule of the Agreement. A conference was requested by the Organization in its letter of October 12, 1998. The issue at bar is whether the Carrier met its conference obligation and whether it removed work reserved to the employees in violation of the Agreement.

As a preliminary point, all arguments that the Board accepts as proper must have been clearly presented on the property. If this claim was not conferenced on the property, that issue had to have been clearly joined between the parties. As it was not joined on the property, the Board will not consider it now. Further, all evidence to support a violation must also have been presented. The Board cannot infer, assume or be persuaded by possibilities.

On the merits, there is no proof that the work contracted out violated any Agreement Rule. In fact, the Board cannot determine from this record the exact nature of the work that is alleged to belong to the Organization. As such, we cannot even conclude that the notice was required. It is basic that the evidence to support a claim must be presented. In this case, it was not presented. When the Carrier argued that the Organization had not met its "burden of proof" to substantiate the allegation, the Organization responded that "to the contrary, the Organization does have on file a document containing all the particulars and specific details documenting this

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Agreement violation. . . ." That file is not in the record and there is no evidence for which the Board could conclude a violation. The claim must therefore be denied.

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 16th day of June 2003.