

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37395
Docket No. MW-37031
05-3-01-3-661

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Duluth, Missabe and Iron Range Railway Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned outside forces to perform Bridge and Building Subdepartment work (roof repair) at the Iron Junction headquarters on July 21, 24 and August 1, 2000 instead of B&B Composite Mechanics R. Luoma, G. Crist, D. Peterson and W. Etter (Claim No. 26-00 DMI).
- (2) As a consequence of the violation referred to in Part (1) above, Claimants R. Luoma, G. Crist, D. Peterson and W. Etter shall now each be compensated at their respective rates of pay for an equal proportionate share of the total man-hours expended by the outside forces in the performance of said 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.

The instant claim arose after the Carrier hired outside contractor forces to repair a long-standing leak in the headquarters building roof. Although the asphalt built-up roof had been repaired many times by Carrier forces, the repairs apparently did not hold for very long.

The Carrier provided notice of its intent to contract the work and discussions with the General Chairman were held. The record shows that the General Chairman suggested a number of alternatives to the Carrier that would have resulted in performing the total project with Carrier forces. The Carrier disputed the reasonableness of the suggestions and also asserted lack of expertise among its forces in dealing with the rubber materials. It is undisputed that the Carrier used its own forces to prepare the project by tearing off the existing asphalt roofing and repairing the underlayment surface below. The contractor only performed the installation of the roofing materials.

As the Carrier asserted in its December 29, 2000 reply on the property, contracting of work on this property is governed by Supplement No. 3(a) to the parties' Agreement. It reads as follows:

"SUPPLEMENT NO. 3
Contracting of Work

- (a) The Railway Company will make every reasonable effort to perform all maintenance work in the Maintenance of Way and Structures Department with its own forces."

As written, Supplement No. 3 permits the contracting of work in certain situations. Paragraph (a) recognizes that even scope-covered work may still be properly contracted out if the Carrier has made every reasonable effort to have it performed with its own forces. On the property, the Carrier maintained that it complied with paragraph 3(a) and noted that the Organization had nowhere

contended that the provision had been violated. The General Chairman explicitly agreed with the Carrier. In his January 23, 2001 appeal, the General Chairman wrote:

“Mr. Moore states Rule 3(a) was never mentioned in the previous claims and appeals. It was not mentioned because it wasn’t violated.” (Emphasis added)

If paragraph (a) of Supplement No. 3 was not violated, as the Organization explicitly conceded, then we have no choice but to find that the Carrier exhausted all reasonable efforts to have the disputed work performed with its own forces. It follows, therefore, that the Carrier did not violate the Agreement when it contracted the work in the manner it did.

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 24th day of February 2005.