

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 40250  
Docket No. MW-39450  
10-3-NRAB-00003-060114  
(06-3-114)

**The Third Division consisted of the regular members and in addition Referee Ann S. Kenis when award was rendered.**

**PARTIES TO DISPUTE:** (Brotherhood of Maintenance of Way Employees Division -  
( IBT Rail Conference  
(  
(Soo Line Railroad Company (former Chicago, Milwaukee  
( St. Paul and Pacific 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 (Robert Carr & Associates, Inc. and Capaul's Floor Covering) to perform Maintenance of Way and Structures Department work (install flooring and related work) at the Yard Office in Tomah, Wisconsin beginning on March 13, 2004 and continuing through March 20, 2004, instead of B&B employees D. Davis, R. Bowers, R. Bean, G. Brinkmeier and K. Popp (System File C-15-04-C080-07/8-00228-099 CMP).**
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with proper notice of its intent to contract out said work as required by Rule 1 and failed to enter good-faith discussions to reduce the incidence of subcontracting and increase the use of Maintenance of Way forces as set forth in Appendix I.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants D. Davis, R. Bowers, R. Bean, G. Brinkmeier and K. Popp shall now be compensated ‘ . . . for a proportionate share EACH of one hundred eleven and one-tenth (111.1) hours for all lost time at the applicable straight time and/or time and one-half (1**

1/2) rate of pay, wages, benefits and work opportunities lost as a result of the Carrier assigning recognized and contractually approved maintenance of way work, to be performed by outside contractors, namely Capaul's Floor Covering and their employees who possess absolutely no seniority or other contractual rights under the Schedule of Rules Agreement, Form 2625, as amended, on the dates of March 13 through March 20, 2004."

**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.

On February 19, 2004, the Carrier provided notice to the Organization of its intent to use an outside contractor for flooring work at the Tomah, Wisconsin, facility. The Carrier stated that the contractor was required to install new rubberized flooring to ensure the warranty. Pursuant to the Organization's request to discuss the proposed contracting, a conference was held on February 27, 2004. At the conference, the Organization took the position that the work was reserved to its members by custom and practice, while the Carrier contended that the rubberized flooring in question had not been installed by BMW-represented forces in the past. The Carrier further contended that installation was required by a contractor to validate the warranty.

The Organization thereafter filed the instant claim, alleging that there is a longstanding practice of utilizing B&B forces to perform flooring work. The Organization maintained that the Carrier failed to make a good faith effort to reduce the use of contractors as required by Appendix I when it subcontracted work which could have been performed by the Claimants, who were fully qualified and available

during the time period in question. During the handling of this claim on the property, the Organization provided time records and a statement by the Claimants indicating that BMW-represented forces have installed flooring in the past without the assistance of contractors.

The Carrier states that the work does not fall under the scope of the Agreement. It asserts that Organization forces have never performed the installation of rubberized flooring, which requires special equipment and expertise.

The Board carefully reviewed the lengthy record in this case. The Union had the burden of proving a violation of the Agreement. It did not meet that burden. Although B&B forces have installed flooring in the past, the record shows that this particular type of rubberized flooring required a licensed contractor in order to validate the warranty. The Organization failed to show that its members were licensed or qualified to perform this specialized work.

The Carrier provided notice of its intent to contract out the work and it met with the Organization in conference to discuss the issue. The claim must 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 15th day of January 2010.**