

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40252
Docket No. MW-39563
10-3-NRAB-00003-060353
(06-3-353)**

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 Employes 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 to perform Maintenance of Way and Structures Department work (exterior remodeling including, but not limited to, installation of posts for pillars) at the Depot at Hastings, Minnesota on October 12 and 13, 2004 (System File C-47-04-C080-14/8-00228-111 CMP).**
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with a proper advance 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 L. Wieting, Jr., E. Arnold, P. Lubeck and M. Norby shall now each be compensated for sixteen (16) hours at their respective straight time rates of pay.”**

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 advised the General Chairman of its intent to utilize outside forces in the performance of work at six locations, including Hastings, Minnesota. The Carrier stated that remodeling work would be performed at the Hastings Depot, including the installation of new structural and non-structural building components to meet the space requirements of additional personnel. Pursuant to the Organization's request to discuss the proposed contracting, a conference was held on February 27, 2004. The work at issue in this claim was performed by the outside contractor on October 12 and 13, 2004.

The Organization advances both procedural and substantive arguments in support of its position that the Carrier violated the Agreement when it contracted out the post installation work. The Organization argues that the subcontracting notice did not include the work at issue. Moreover, the disputed work was never made the subject of discussion at the February 27, 2004 meeting. The Organization also contends that the Carrier already had a plan in place for contracting out the work when it met with the Organization in conference. Under these circumstances, the Carrier's actions demonstrate noncompliance with the notice and conferencing requirements set forth in Appendix I and a lack of good faith.

In addition, the Organization asserts that this was straightforward repair work that the Claimants were fully qualified, available and willing to perform. The

Organization contends that the disputed work is plainly encompassed within the scope of the Agreement and has been customarily and historically performed by Organization members.

The Carrier argues that the instant claim should be barred because this is one of multiple claims filed by the Organization for the same work performed by outside contractors at the Hastings Depot.

The Carrier further argues that the Organization provided no evidence of a traditional, historical or customary practice of BMW-represented employees performing this work. Equally important, the Carrier submits that it was not obligated to carve out the post installation work from the overall project and assign it to BMW-represented employees.

After careful review of the record, the Board is persuaded that the Carrier met its obligations under Appendix I of the Agreement. The Organization provided no probative evidence that the Carrier arranged to subcontract out the work prior to notifying and meeting with the Organization. Argument is not evidence. There is, therefore, no basis for a finding that the outcome of the conference was a fait accompli, or that the Carrier met with the Organization in bad faith.

Moreover, the installation of the posts was part of a major renovation at the Hastings Depot. Notice was given to the Organization concerning the overall project and an opportunity to meet was provided. The installation of posts was integral to the overall project. Under these circumstances, we find that the Carrier sufficiently complied with the notice and conferencing requirements in this instance.

We disagree with the Carrier when it argues that the instant claim is duplicative of other claims filed in connection with the remodeling work at the Hastings Depot. This claim identifies a specific part of the overall work project, which was not the subject of other claims. Nevertheless, the fact that the installation of the posts was a small part of a much larger project is significant. While Carrier forces may have had the skills to handle the disputed work, the Carrier was not required to piecemeal parts of a larger project in order to enable its employees to perform some small portion thereof. Accordingly, the claim must be denied.

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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.