

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40321
Docket No. MW-40034
10-3-NRAB-00003-070232
(07-3-232)**

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

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
PARTIES TO DISPUTE: (
(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 (remove old lockers, install sub-flooring in the furnace room and related remodeling work) at the Depot at Hastings, Minnesota on April 6, 7 and 8, 2005 (System File C-12-05-C080-06/8-00228-119 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, R. Hansen, II and A. Anderson shall now each be compensated at their respective straight time rates of pay for a proportionate**

share of the forty-eight (48) man-hours expended by the outside forces in the performance of the aforesaid 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.

On March 21, 2005, the Carrier notified the General Chairman of its intent to contract out the installation of new flooring at the CPR Building in Hastings, Minnesota. The notice indicated that specialized tools and training would be required to complete the work. The parties met in conference on March 22, 2005 to discuss the proposed contracting out. According to the Organization, the Carrier advised during conference that the work in question involved the installation of 300-400 square feet of flooring in the T&E employee area and that the work would require a special router. The Organization took the position during conference that BMW-represented forces have performed this work in the past without the assistance of contractors and should be assigned the job at Hastings. It was agreed that one B&B crew member would work with the contractor to acquire the skills to perform this work in the future.

The Organization subsequently learned that the contractor removed lockers and laid subflooring in the furnace room at the Hastings facility. The Organization filed the instant claim contending that the Carrier's contracting notice did not encompass the work actually performed by the contractor. The Organization further contended that the Carrier did not discuss during conference the fact that

the contractor was going to remove the lockers to install sub-flooring in the furnace room at the Hastings facility. To the Organization, it is evident that the Carrier failed to provide proper notice and to meet its contractual obligation to engage in good faith discussions as required in Rule 1 and Appendix I, particularly because the work in question could have been performed by BMWWE-represented forces which have traditionally and customarily performed such work in the past.

The Carrier argues that the removal of the lockers and installation of subflooring were tasks integral to the flooring work performed by the contractor and, therefore, it fully complied with its notice and conferencing obligations. We agree. The Agreement does not require the Carrier to treat each discrete task within a project as a separate project for purposes of notice. Moreover, the parties had an opportunity to discuss the remodeling work in conference and the Organization was unable to persuade the Carrier that its members had the expertise to perform the work. The Carrier's discussion of the overall project and the important aspects of that project during conference sufficiently met its good faith obligations.

The Organization also claims that the work is reserved to its members. The Carrier argues that it has hired contractors in the past for projects like this one and, in any event, the employees did not have the specialized skills to do the job. In light of the fact that the parties agreed during conference to have a B&B employee at the site during the project to learn the techniques and skills for this particular work, the Board finds that the Carrier's position is well-founded. Under the circumstances, the Board concludes that the Carrier was not required to piecemeal parts of the larger project which was beyond the scope of available skills of Carrier forces.

In view of the foregoing, the Organization has not established that the Carrier violated the Agreement. The claim is denied.

AWARD

Claim denied.

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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 1st day of March 2010.