

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42222
Docket No. MW-41961
15-3-NRAB-00003-120302**

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

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
PARTIES TO DISPUTE: (
(Union 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 (Omaha Door and Window) to perform Maintenance of Way and Structures Department work (remove and replace doors) on Building #000414 in Columbus, Nebraska on January 4, 2011 (System File G-1152U-54/1551701).**
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman a proper advance written notice of its intent to contract out said work and when it failed to make a good-faith attempt to reach an understanding concerning said contracting as required by Rule 52 and the December 11, 1981 National Letter of Agreement.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants D. Weigelt and P. Gantnier shall now each be compensated for ten (10) 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 January 4, 2011, an outside contractor, Omaha Door and Window, removed the existing hollow metal frame around the door to Building #000414, in Columbus, Nebraska, and replaced it with a new frame, two new doors and associated hardware. Such work has traditionally been performed by the Carrier's Maintenance of Way forces, and the Organization filed this claim to protest the contracting out as a violation of Rule 52. The Carrier responded that the work was permitted under both Rule 52(a) and Rule 52(b).

Rule 52(a) states:

“(a) By agreement between the Company and the General Chairman, work customarily performed by employees covered under this Agreement may be let to contractors and be performed by contractors' forces. However, such work may only be contracted provided that special skills not possessed by the Company's employees, special equipment not owned by the Company, or special material available only when applied or installed through supplier, are required; or when work is such that the Company is not adequately equipped to handle the work, or when emergency time requirements exist which present undertakings not contemplated by the Agreement and beyond the capacity of Company's forces. In the event the Company plans to contract out work because of one of the criteria described herein, it shall notify the General Chairman of the Organization in writing as far in advance of the date of the contracting transaction as is practicable and in any event not less than fifteen (15) days prior thereto, except in 'emergency time requirements' cases. If the General Chairman, or his representative, requests a meeting to discuss matters relating to the said contracting transaction, the designated representative of the Company shall

promptly meet with him for that purpose. Said Company and Organization representative shall make a good faith attempt to reach an understanding concerning said contracting but if no understanding is reached the Company may nevertheless proceed with said contracting, and the Organization may file and progress claims in connection therewith.” (emphasis added)

The evidence in the record establishes that the work was undertaken in response to an unfavorable report from the Fire Marshall, who identified the existing doors as a “Safety Item.” The evidence further establishes that the work was let to a contractor because the Carrier’s forces were already assigned to “. . . the much more urgent duties of removing 1 and 2A Bridge calls at the time of the replacement,” per the statement from Manager of Bridge & Building Tim Bowley. The 1 and 2A Bridge calls are the most urgent ones, considered “critical to maintaining safe and efficient operations.” With its existing forces fully engaged in work that was critical in nature, the Carrier was faced with a situation where it was “not adequately equipped to handle the work” – one of the exceptions to the limitations on contracting set forth in Rule 52(a). While replacing the doors did not rise to the level of an “emergency” under Rule 52, there was certainly an element of urgency to the project, given the implications for the Carrier’s employees and equipment of doors that presented a danger during a fire. Under the totality of the circumstances, the Board finds that the Carrier did not violate the Agreement when it hired a contractor to replace the defective doors at issue here in response to the Fire Marshall having identified them as a fire hazard.

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 17th day of November 2015.