

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 42428  
Docket No. MW-41919  
16-3-NRAB-00003-120229**

**The Third Division consisted of the regular members and in addition Referee George E. Larney when award was rendered.**

**(Brotherhood of Maintenance of Way Employees Division -  
( IBT Rail Conference  
PARTIES TO DISPUTE: (  
(Union Pacific Railroad Company (former Chicago  
( and North Western Transportation Company)**

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- (1) The Agreement was violated when the Carrier assigned outside forces (Winding Roofing Company) to perform Maintenance of Way and Structures Department work (remove/replace roofing material) at the Diesel Facility Building in the Butler Yard beginning on November 10, 2010 and continuing through December 21, 2010 (System File B-1101C-102/1546966 CNW).**
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with proper advance notice of its intent to contract out the above-referenced work or make a good-faith attempt to reach an understanding concerning such contracting as required by Rule 1 and Appendix 15.**
- (3) As a consequence of the violation referred to in Parts (1) and/or (2) above, Claimants J. Feltz, C. Moore, and C. Mink shall now each be compensated at their respective and applicable rates of pay for an equal share of the one thousand nine hundred twenty (1,920) total straight time man-hours and the four hundred eighty (480) total overtime 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.

The Carrier issued the following 15-day Notice dated September 3, 2010 informing the Organization of its intent to contract out the following work:

**“Location: Butler Diesel Shop Building #0732 4823 N 119th St  
Milwaukee WI.**

**Specific Work: Provide labor, supplies, materials and equipment necessary to abate asbestos containing materials, remove and replace roof as specified.**

**Serving of this “notice” is not to be construed as an indication that the work described above necessarily falls within the “scope” of your agreement, nor as an indication that such work is necessarily reserved, as a matter of practice, to those employees represented by the BMW.**

Said 15-day Notice of Carrier’s intent to subcontract out the roofing work was sent to the Organization pursuant to the applicable provisions of Rule 1 of the controlling Agreement. In response, the Organization exercised its contractual rights as provided by Rule 1(b) and requested to meet with Carrier in conference in a good faith attempt to reach an understanding concerning said subcontracting of work. In compliance with the Organization’s request, a conference was held on September 20, 2010.

By letter dated October 6, 2010, the Organization sent Carrier a summation of their discussion in conference. The Organization apprised Carrier its 15-day Notice was defective in that it failed to identify the reason(s) for subcontracting the roofing work as required by the provisions of Rule 1(b) of the controlling Agreement. The Organization informed that this deficiency failed to provide adequate notice and therefore constituted a separate violation of the CBA. The Organization noted that Carrier advised the work in question appeared to involve 20,000 square feet of siding and 23,000 square feet of roofing that contains asbestos. In light of this revelation pertaining to the presence of asbestos, the Organization, without prejudice to its position the roofing work was scope covered work as described by the provisions of Rule 1, nevertheless, the Organization stated that the project appeared to be work that is outside the capacity of the Carrier's maintenance of way forces in that it involves the removal of asbestos containing material that requires special tools and equipment not owned or readily available to the Carrier. The Organization informed Carrier it would therefore not take exception to the specific project at the specific location based on the removal of asbestos. However, the Organization put Carrier on notice that should the work in question take on a nature not addressed by Carrier at conference, it would explore its options under Rule 1(b).

Notwithstanding its stated position at conference it would not take exception to the work in question, work it held to be scope covered work, it filed the subject claim on January 4, 2011 after completion of the work on grounds that Carrier failed to provide any proof as it promised at conference it would, such as providing the asbestos survey and pictures of the work being performed, that reroofing the engine facility exposed any kind of asbestos containing material whatsoever. Additionally, the Organization submits that Carrier has not identified any special tools, skills or equipment utilized for the removal of asbestos. On the other hand, the Organization proffered written statements and pictures obtained by employees who observed the contractor employees every day while performing the work and noted that no additional safety measures had been taken or personal safety protective equipment had been provided to the contractor employees as indication employees were not performing removal of asbestos containing material.

Contrary to Carrier's position it served a "proper" 15-day notice to the Organization of its intention to contract out the work of re-roofing the Butler Diesel Shop Building, the Board notes it was deficient in one respect and that is, it was missing the information as to the reason it was subcontracting the work as opposed to

utilizing its own maintenance of way forces, an element of information required by Appendix 15, the Berge-Hopkins December 11, 1981 Letter of Understanding.

The Board is persuaded by a straight-forward reading of the Scope Rule, Rule 1 of the Controlling Agreement that the work of re-roofing a structure such as the Diesel Shop Building aka the engine house is work reserved to maintenance of way employees. However, the Board is also persuaded by the whole of the record evidence that the Organization, as asserted by Carrier, failed to prove by a preponderance of the evidence that the work in question was devoid of any asbestos abatement; work the Organization's employees lack the skill, knowledge and expertise to perform and therefore constitutes an exception to outside forces performing scope covered work. It is quite apparent that the entire project of re-roofing the engine house did not entail the handling and disposal of asbestos in accord with government regulations and it was probably this part of the work maintenance of way employees observed leading them to conclude that no asbestos abatement work was being performed. On the other hand, we are persuaded that Carrier to our satisfaction established through argument and written evidence that asbestos abatement represented a substantial part of the work and could only be performed by contracting out the work to an outside force.

Based on the foregoing findings, the Board rules to deny the instant claim in its entirety.

**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 31st day of October 2016.