

Award No. 1
Case No. 2

Public Law Board No. 2630

PARTIES
TO
DISPUTE:

Brotherhood of Maintenance of Way Employees
and
Baltimore and Ohio Railroad Company

STATEMENT
OF
CLAIM:

1. Carrier violated the Agreement when it contracted with janitorial services to paint floors in the roundhouse and museum, Mount Clare.
2. Claim of Ernest Boggs and John Carnaggio for 112 hours at the painters rate divided equally between the claimants account of janitorial service employes on February 15 and 16, 1977 painting floors in the roundhouse and museum.

FINDINGS:

This dispute centers on the use of an outside contractor, Universal Services, to paint the floor of the B&O Museum at Baltimore in February 1978. The building was being prepared for the Company's 150th anniversary celebration. One

of the duties specifically reserved for B & B forces by Rule 1(c), the applicable Scope Rule, is the "painting...of railroad structures."

Carrier points out that the same contractor was used to paint that floor the last time it was painted. That circumstance, in and of itself, is not a controlling factor in the present case.

Carrier also takes the position that it was free to contract out the work because of the magnitude of the project and the required time of completion. It relies on Rule 1(b) 5(a) 1 and 5 which stipulates that the agreement does not apply to work farmed out "By reason of the magnitude of the project" or because time is of the essence.

The record establishes that the building was not sufficiently warm to permit painting until February 17, 1977, eleven days prior to the anniversary celebration. It also indicates that claimants were on duty and under pay at the time the painting was performed.

A prima facie case has been made out by Carrier that the exceptions provided for in Rule 1(b)5(a) 1 and 5 are applicable in this situation. Evidence to the contrary has not been presented. In this posture of the record, the claim must be denied.

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AWARD:

Claim denied.

Adopted at Baltimore, Maryland, *April 22*, 1980.



Harold M. Weston, Chairman



Carrier Member



Employee Member

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