

PUBLIC LAW BOARD NO. 2774

Award No. 208
Case No. 208

PARTIES Brotherhood of Maintenance of Way Employees
TO and
DISPUTE: Atchison, Topeka and Santa Fe Railway Company

STATEMENT
OF CLAIM That the Carrier violated the provisions of the current agreement particularly but not restricted to Appendix No. 8, when on September 1, 1987 the Carrier contracted with Genco Construction to remodel the interior of the Division Office in Newton, Kansas.

The Carrier shall compensate each Claimant at their respective rate of pay, their proportional share of the hours expended by contractor employees.

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

Prior to September 1, 1987 the Carrier contracted with Genco Construction to remodel the interior of the Division office located at Newton, Kansas. The Organization alleges this work is reserved for Middle Division Bridge and Building Employees.

The Agreement between the Organization and the Carrier provides in part in Appendix No. 8, Article IV:

"In the event a carrier plans to contract out work within the scope of the applicable schedule agreement, the carrier shall notify the General Chairman of the organization involved in writing as far in advance of the date of the contracting transaction as is practicable and in any event not less than 15 days prior thereto."

On June 5, 1987 the Carrier wrote the General Chairman of the Organization stating:

* * * * *

"This will confirm our telephone discussion on May 26, 1987, at which time you were notified, pursuant to the provisions of Article IV of the May 17, 1968 Agreement, of the Carrier's intent to contract out the following work at the Division Office Building at Newton, Kansas.

Replace all windows in building and remodel second floor, including insulation of roof and exterior walls, and installation of new ceilings, new partitions, new floor covering, new restrooms, new cabinet work, etc. Miscellaneous work in other areas will also be included.

The approximate starting date of the aforementioned work is June 15, 1987. It is expected that the work will be completed on or about April 1, 1988. Approximately 6,000 man hours will be involved in the performance of the work.

* * * * *

The Organization claims the contracting out violated the Agreement and that fifteen (15) named Middle Division B & B Employees should be paid equal proportionate shares at their rate for the hours worked by the outside forces.

The Carrier denies the work is exclusively reserved to Claimants

under any practice, principle or rule. In the handling of this claim on the property in support of its contention, the Carrier pointed to Third Division denial Award 19494 which involved the same parties and rules.

The Organization points to Rule 1 of the Agreement which refers to B & B Foremen, Mechanics, B & B Paint Foremen, Painters and Paint Helpers. It also refers to Rule 2, Seniority, which mentions B & B Foremen, Assistant Foremen, Mechanics, B & B Paint Foremen, Painters and Paint Helpers. The Organization also points to the Wage Appendix which sets forth a rate of pay for the B & B classifications in Groups 1 and 2. Further, the Organization contends that the work herein described has been customarily and historically performed by the Carriers B & B Employees.

In the Organization's view, the work at issue is clearly encompassed within the scope of the Agreement with references contained in Rule 1 and 2 and therefore no proof of practice is necessary.

In agreement with the Carrier this Board finds the references in Rule 1 and 2 to be entirely general in nature. Numerous Third Division Awards have held that when the rule relied upon is general, as in this case it is the Organization's burden to establish that employees it represents have performed the work historically and customarily on a system wide basis.

There is no evidence to establish historic custom here. The evidence of record on that point is to the contrary.

AWARD

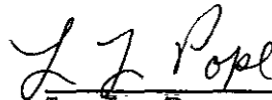
Claim Denied.



I. M. Lieberman, Neutral-Chairman



C. F. Foose, Employee Member



L. L. Pope, Carrier Member

Chicago, Illinois

June 26, 1991