

PROCEEDINGS BEFORE PUBLIC LAW BOARD NO. 3781

AWARD NO. 209

Cases Nos. 209 and 210

Referee Fred Blackwell

Carrier Member: J. C. Amidon

Labor Member: D. D. Bartholomay

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

vs.

CONSOLIDATED RAIL CORPORATION

STATEMENT OF CLAIM:

Claim of the Brotherhood that:

1. The Agreement was violated when the Carrier assigned outside forces (Middleton Roofing Company) to removed and replace the old roof on the Collinwood Yard Office Building on September 23, October 13, 14 and 15, 1993 (System Docket MW-3426).
2. The Agreement was violated when the Carrier assigned outside forces (Middleton Roofing Company) to remove and replace the old roof on the Collinwood YMCA Dorm Building on October 21, 22, 23, 25, 26, 27, 29 and November 2, 1993 (System Docket MW-3425).
3. The Agreement was further violated when the Carrier failed to furnish the General Chairman with advance written notice of its intention to contract out the work described in Parts (1) and (2) above, as required by the Scope Rule.
4. As a consequence of the violations referred to in Parts (1) and/or (3) above, B&B Mechanics F. Hoyt, W. Johnson, K. Champa, R. H. Zinni and J. Cogar shall each be allowed thirty-two (32) hours' pay at their respective straight time rates.
5. As a consequence of the violations referred to in Parts (2) and/or (3) above, B&B Mechanics F. Hoyt, R. H. Zinni, K. Champa, A. Colarusso and G. Pongonis shall each be allowed fifty-six (56) hours' pay at their respective straight time rates and eight (8) hours' pay at their respective time and one-half rates.

FRED BLACKWELL
ATTORNEY AT LAW

19129 ROMAN WAY
GAITHERSBURG,
MARYLAND 20879
(301) 977-5000

FINDINGS:

Upon the whole record and all the evidence, after hearing in the Carrier's Office, Philadelphia, Pennsylvania, 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 by agreement and has jurisdiction of the parties and of the subject matter.

DECISION:

The Claim in System Docket MW-3425 is denied; the claim in System Docket MW-3426 is sustained.

OPINION

This dispute involves two (2) combined Scope claims which allege that the Carrier violated the BMW Scope by using an outside contractor (The Middleton Roofing Company) to remove and replace the roof on (1) the Collinwood YMCA Dorm Building in October and November 1993 (System Docket MW-3425) and on (2) the Collinwood Yard Office in September and October 1993 (System Docket MW-3426). Both of these structures are in the Collinwood Yard, Cleveland, Ohio, on the Cleveland Seniority District of the Pittsburgh Division.

From full review of the record the Board finds that the Dorm Building Claim must be denied and that a sustaining award is in order respecting the Yard Office Building Claim.

The Claim concerning the roofing of the Dorm Building is set out in the Organization's submission as follows:

"The Agreement was violated when the Carrier assigned outside forces

(Middleton Roofing Company) to remove and replace the old roof on the Collinwood YMCA Dorm Building on October 21, 22, 23, 25, 26, 27, 29 and November 2, 1993 (System Docket MW-3425)."

The Claim concerning the roofing of the Yard Office Building is set out in the Organization's submission as follows:

"The Agreement was violated when the Carrier assigned outside forces (Middleton Roofing Company) to removed and replace the old roof on the Collinwood Yard Office Building on September 23, October 13, 14 and 15, 1993 (System Docket MW-3426)."

* * * * *

As regards the claim concerning the roofing of the YMCA Dorm Building (System Docket MW-3425) the Organization alleges that the Carrier failed to furnish the General Chairman with advance written notice of the said contracting out pursuant to the Scope Rule's notice provisions concerning contracting out, and that the work of repairing and maintaining roofs is contractually reserved to the Carrier's B&B Department forces. Consequently, the contracting of the roofing work on the Dorm Building to an outside Company violated the Scope of the applicable Agreement.

The Carrier submits that the performance of the work in question by an outside contractor was contractually permissible and that the notice provisions in the Scope rule were not violated.

The evidence in the record as a whole does not establish the allegations on which this claim is based and the claim must therefore be denied for want of proof. More specifically, the record does not support the Organization's assertion that the Carrier failed to give advance written notice of its intention to contract out the roofing

work on the Dormitory Building at Collinwood Yard, and indeed, the record affirmatively established that said notice was given by Carrier to General Chairman J. P. Cassese, Sr., by letters dated October 8 and 13, 1993.

As regards the merits of the claim, the record shows that the BMW Employees have installed some types of roofs, but they have not installed the rubberized type of roof that was installed on the Dormitory Building at the Collinwood Yard. The installed rubberized roof was superior in quality to the prior roof and its installation required equipment that the Carrier did not own. In addition, in order for the work to be protected under the manufacturer's twenty (20) year warranty on the roof, the roof was required to be installed by an authorized agent of the manufacturer.

In view of the foregoing, and based on the record as a whole, the claim concerning the roofing of the YMCA Dorm Building in System Docket MW-3425 will be denied for lack of record support.

* * * * *

As regards the claim concerning the roofing of the Collinwood Yard Office Building (System Docket MW-3426), the Organization alleges that the Carrier failed to furnish the General Chairman with advance written notice of the said contracting out pursuant to the Scope Rule's notice provisions concerning contracting out, and that the work of repairing and maintaining roofs is contractually reserved to the Carrier's B&B Department forces. Consequently, the contracting of the roofing work on the Dorm Building to an outside Company violated the Scope of the applicable Agreement.

The Carrier submits that the performance of the work in question by an outside contractor was contractually permissible and that the notice provisions in the Scope Rule were not violated.

The Carrier's asserted reasons for denying the claim concerning the roofing of the Collinwood Yard Office Building (System Docket MW-3426), like its asserted reasons for denying the claim concerning the roofing of the Dorm Building, is an affirmative defense which, in order to prevail, must be supported by probative evidence that proves the existence of said reasons for denying the claim. Such evidence is not present in the confronting record and accordingly, the Carrier's affirmative defense is rejected for want of proof and the allegations in support of the claim stand un rebutted of record.

In view of the foregoing, and based on the record as a whole, the claim concerning the roofing of the of the Collinwood Yard Office Building (System Docket MW-3426) will be sustained.

A handwritten signature in cursive script that reads "Fred Blackwell". The signature is written in dark ink and is positioned above a horizontal line.

Fred Blackwell
Chairman / Neutral Member
Public Law Board No. 3781

July 15, 1998

FRED BLACKWELL
ATTORNEY AT LAW

19129 ROMAN WAY
GAITHERSBURG,
MARYLAND 20879
(301) 977-5000

AWARD

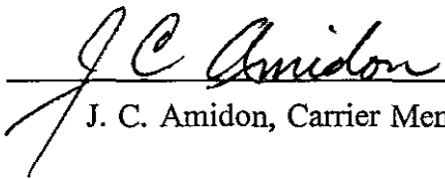
The record does not support the claim for the work of roofing the Dorm Building in Collinwood Yard, Cleveland, Ohio, (System Docket MW-3425) and accordingly, said claim is hereby denied for lack of record support.

In regard to the claim for the work of roofing the Yard Office in Collinwood Yard, the Carrier's affirmative defense fails for want of the requisite support and therefore, the allegations in support of the claim stand unrebutted of record. Accordingly, the claim for the work of roofing the Collinwood Yard Office in Collinwood Yard, Cleveland, Ohio, (System Docket MW-3426) is sustained.

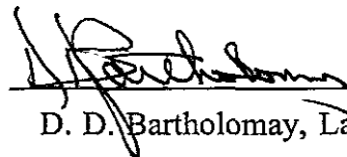
BY ORDER OF PUBLIC LAW BOARD NO. 3781.



Fred Blackwell, Neutral Member



J. C. Amidon, Carrier Member



D. D. Bartholomay, Labor Member

Executed on 7/22, 1998

DOC\CONRAIL\3781\209-210.J15

FRED BLACKWELL
ATTORNEY AT LAW

19129 ROMAN WAY
GAITHERSBURG,
MARYLAND 20879
(301) 977-5000