

**NATIONAL MEDIATION BOARD**

**PUBLIC LAW BOARD NO. 5564**

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES )  
and ) Case No. 20  
NORTHEAST ILLINOIS REGIONAL COMMUTER ) Award No. 14  
RAILROAD CORPORATION )  
\_\_\_\_\_ )

Martin H. Malin, Chairman & Neutral Member  
R. C. Robinson, Employee Member  
J. P. Finn, Carrier Member

Hearing Date: January 7, 2009

STATEMENT OF CLAIM:

- (1) The Agreement was violated when the Carrier assigned outside forces (R.W. Clark) to perform Maintenance of Way and Structures Department work (roofing work) at the Fox Lake Depot from August 1 through December 16, 2002 instead to Messrs. S. Alexander, M. Arnold, D. Petrie, J. Thomas and A. Mieszanek (System File C-36-02-C080-08-M/08-10-456).
- (2) As a consequence of the violation referred to in Part (1) above, Messrs. S. Alexander, M. Arnold, D. Petrie, J. Thomas and A. Mieszanek shall each be allowed an equal proportionate share of one thousand nine hundred seventy-six (1,976) hours' pay at the respective straight time rates of pay.

FINDINGS:

Public Law Board No. 5565 upon the whole record and all of the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

By letter dated May 25, 2001, Carrier notified the Organization of its intent to contract out improvement work at Fox Lake station. Specifically the letter advised of the intent to contract out: reconstruction of platforms, expansion of the parking lot, removal and replacement of curbs and gutters, installation of a new pedestrian crosswalk, repairs to brick columns on the

bike shelter, installation of brick pavers around the station house, construction of a wall for the newspaper vending area, reconstruction of concrete stairs and construction of a raised decorative roof on the station house. The letter advised that Carrier intended to use Maintenance of Way forces on the work on the platforms and pedestrian crosswalk and to flag for the contractors. It related that Carrier's reasons for the contracting out were that its employees lacked the special skills to perform the curb and gutter, parking lot, concrete stairs and roofing work, the need to coordinate the brick paver work with the curbs and gutters, and the need for special equipment that Carrier did not possess to perform the work. The notice was issued in accordance with Agreement Rule 1(c) which provides:

It is the intent of this Agreement for the Carrier to utilize Maintenance of Way employees under the rules of this Agreement to perform the work included within the Scope of the Agreement; however it is recognized that in certain specific instances the contracting out of such work may be necessary provided one or more of the following conditions are shown to exist:

- (1) Special skills necessary to perform the work are not possessed by its Maintenance of Way employees.
- (2) Special equipment necessary to perform the work is not owned by the Carrier and/or is not available to the Carrier for its use and operation therefor by its Maintenance of Way employees.
- (3) Time requirements exist which prevent undertakings not contemplated by the Agreement that are beyond the capacity of its Maintenance of Way employees.
- (4) Federal and State laws specifically require the Carrier to submit such work to public bidding.

In the event the Carrier plans to contract out work because of one or more of the criteria described above, it shall notify the General Chairman 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. Such notification shall clearly set forth a description of the work to be performed and the basis on which the Carrier has determined it is necessary to contract out such work according to the criteria set forth above.

In the event the General Chairman, or his representative, requests a meeting to discuss matters relating to the said contracting transaction, the designated representative of the Carrier shall promptly meet with him for that purpose and the parties shall make a good faith effort to reach an agreement setting forth the manner in which the work will be performed. It is understood that when conditions 3 and/or 4 are cited as criteria for contracting work, the Carrier, to the extent possible under the particular circumstances, shall engage its Maintenance of Way employees to perform all maintenance work in the Maintenance of Way Department and construction work in the Track Subdepartment,

with due consideration given to the contracting out of construction work in the Bridge and Building Subdepartment to the extent necessary. If no agreement is reached, the Carrier may nevertheless proceed with said contracting and the Organization may file and progress claims in connection therewith.

Nothing herein contained shall be construed as restricting the right of the Carrier to have work customarily performed by employees included within the Scope of this Agreement from being performed by contract in emergencies that affect the movement of traffic when additional force or equipment is required to clear up such emergency condition in the shortest time possible. In such instances, the Carrier shall promptly notify the General Chairman of the work to be contracted and the reasons therefor, with such information to be confirmed in writing within fifteen (15) days of the date such work commences.

In accordance with Rule 1(c), the General Chairman requested a conference which was held on June 28, 2001. At the conference, it was agreed that Agreement-covered employees would install the brick pavers and reconstruct the concrete stairs, in addition to the work identified in the original notice to be performed by Agreement-covered employees. The instant claim challenges Carrier's decision to contract out the construction of the raised decorative roof on the station. Carrier justified the contacting out of the roof on the ground that covered forces did not possess the skills needed to perform the work.

Carrier contends that the General Chairman did not raise the issue of roof construction at the conference and, therefore, the Organization may not now claim that the employees had the skills necessary to perform the work. We need not address this argument because the record is clear that Agreement-covered employees did not have the skill necessary to perform the work and, consequently, Carrier was justified in contracting the work out.

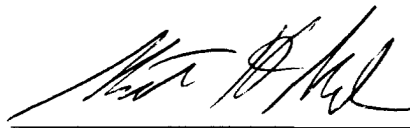
The record is clear that Agreement-covered employees have constructed roofs in the past. The Organization submitted considerable evidence of this. However, the roof construction at Fox Lake was particularly complicated and Carrier submitted substantial evidence that it was unlike work previously performed by covered forces. The work involved complex framing tied in with the existing framework of the station. During handling on the property, Carrier provided a copy of the project plans and noted the complexity of the job which required: installing new truss support posts and securing them to existing trusses; installing double plates and prefabricated roof trusses; installing extended wall framing, sheathing and siding; installing hurricane clip connections to secure trusses to double plates; installing truss bracing; installing smoke barrier from ceiling to new roof sheathing; installing roof sheathing to truss cut openings for vents; installing dormer framing trusses, roof sheathing and valley flashing; constructing Dutch hip gables; constructing gables over the doors and the agent's office window; installing eave closure and trim details with vented soffit; installing decorative steel roof tiles; installing end wall of dormers with trim and decoration; installing flashing at abutting surfaces; installing new gutters and down spouts; and installing finishing of new work item surfaces, including fyp on items.

In response, the Organization submitted the plans to the former employer of Claimant, Foreman S. Alexander, who opined, "Given Scott's experience and correct personnel, Scott would have been able to handle the Fox Lake Depot roof construction." The key words in the former employer's assessment are "and correct personnel." The Organization offered no evidence that the other Claimants had any experience in performing the complex roofing required for the Fox Lake depot.

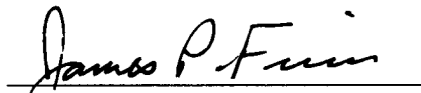

The Organization did present evidence that the contractor did a substandard job on the roofing and that it was Claimant S. Alexander who recognized contractor errors and called them to the attention of relevant individuals resulting in their correction. However, we fail to see how evidence of substandard performance by the contractor establishes that the Claimants had the skills and abilities to perform the work. At most, the Organization may have established that Claimant S. Alexander had the ability to perform the work with the "correct personnel," but the Organization has failed to carry its burden of proving that the other Claimants had the ability to perform the work. Accordingly, the claim must be denied.

**AWARD**

Claim denied.



Martin H. Malin, Chairman

  
J. P. Finn  
Carrier Member  
R. C. Robinson, Employee Member  
Employee Member

Dated at Chicago, Illinois, March 31, 2009