

NATIONAL MEDIATION BOARD
SPECIAL BOARD OF ADJUSTMENT 1048

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES)	
)	Case No. 161
and)	
)	Award No. 161
NORFOLK SOUTHERN RAILWAY COMPANY)	
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Richard K. Hanft, Chairman & Neutral Member
T. W. Kreke, Employee Member
D. L. Kerby, Carrier Member
Hearing Date: May 1, 2009

STATEMENT OF CLAIM: “Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier assigned outside forces (United States Equipment Distributors) to perform basic Bridge and Building (B&B) Sub-Department work beginning on November 4, 2004 and continuing through November 12, 2004 (Carrier’s file MW-FTW-04-78-LM-419).
2. The Agreement was further violated when the Carrier failed to hold a good-faith conference in accordance with Appendix “F” and the December 11, 1981 Letter of Agreement.
3. As a consequence of the violations referred to in Parts 1 and/or 2 above, we request that the members of B&B Gang 201 consisting of Messrs. Ronald Markin, Dennis Williams, and Charles Stabile be paid at their applicable rates of pay, equally divided, for total number of man hours worked by the contractor.”

FINDINGS: Special Board of Adjustment No. 1048, 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.

This dispute concerns a claim that contractor employees were used to “pour concrete fuel containment pads on the Carrier’s property outside the Bridge and Building Shop off to the side of the East end switching lead at MP D 7.10 Eastbound Yard on the Detroit Terminal” and that “Historically, the Carrier’s B & B Gang 201 have done many, if not all, cement jobs on the Detroit Terminal property.” The pouring of these pads were one component of a much larger, system-wide, turnkey Spill Prevention Control and Countermeasure Project implemented in

response to newly promulgated EPA requirements under Title 40 CFR, § 112 where all Norfolk Southern Mechanical and Intermodal Facilities were upgraded to comply with EPA requirements.

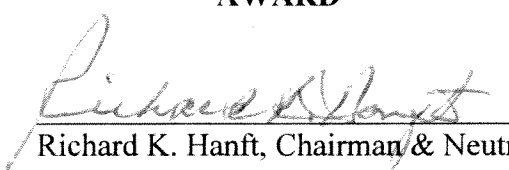
Carrier sent notice on January 9, 2004 of its intent to contract out this work consisting of construction of concrete secondary containment structures including lighting, alarm systems, security fencing for above-ground storage tanks, replacement of switch heater tanks, and the provision of liquid phase absorption systems capable of removing BTEX compounds. A conference was held in regard to the same on June 24, 2004 where no agreement was reached concerning the contracting. The work complained of in the Organization's claim took place November 4, 2004 through November 12, 2004.


The Organization's claim must fail for two reasons: First, the only component of the overall project that the organization takes umbrage with is the pouring of the concrete containment pads. Work contracted out must be considered as a whole. Here, the scope of the overall project was beyond the skills, equipment and time of the Carrier forces. The Carrier is not required to piecemeal out portions of the overall project such that the employees could have performed some of the work. *See* 3-NRAB, Awd. 30633 (Vernon).

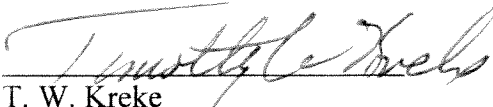
Secondly, the "Carrier has the right under Article IV to contract out work where advance notice is given and the Carrier has established a mixed past practice of contracting out work similar to that involved in the dispute." *See* 3-NRAB Awd. 30264 (Duffy). In this particular instance, Carrier showed that work of a similar nature has been performed by outside contractors in the following locations in the past: Harrisburg Pennsylvania (2000), St. Louis, Missouri (1994), Decatur, Illinois (1992), Ft. Wayne, Indiana (2003), Bluefield, West Virginia (2003) Elkhart, Indiana (2003) and Altoona, Pennsylvania (2003). The Organization did not refute the performance of that work by outside contractors. Hence, a mixed past practice has been established. Thus, on this basis and having met the requirement of notice and conference, the Carrier's action cannot be found in violation of the agreement. *See* 3-NRAB Awd. 30688 (Marx).

AWARD

Claim denied.


Richard K. Hanft, Chairman & Neutral Member
Dated at Chicago, Illinois, June 28, 2010


D. L. Kerby
Carrier Member
Dated: 7/19/10


T. W. Kreke
Employee Member
Dated: July 19, 2010