

Award No. 4492
Docket No. 4480
2-AT&SF-EW-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Jacob Seidenberg when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 97, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.—C. I. O. (Electrical Workers)**

**THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY
(Eastern Lines)**

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement, Messrs. D. F. Homewood, L. L. Isaccs, R. A. Woods, D. D. Homewood, J. E. Coffman, J. L. Jones, J. S. Mooney, H. W. Crook, V. L. Wheeler, R. D. Dowdler, R. K. Williams, J. G. Lindbloom, W. L. Monis, W. T. Hooper, M. A. Jontra, W. F. Meiers, V. D. Wyatt, V. D. Hooper, G. G. Carr and H. D. Hendrickson were unjustly dealt with and the provisions of the agreement violated, when the Atchison, Topeka and Santa Fe Railway Company, Eastern Lines Communications Department, contracted certain communications installations and did not assign that communications work to the above named Communications Department Electrical Workers.
2. That accordingly, the Atchison, Topeka and Santa Fe Railway System be ordered to compensate Messrs. D. F. Homewood, L. L. Isaccs, R. A. Woods, D. D. Homewood, J. F. Coffman, J. L. Jones, J. S. Mooney, H. W. Crook, V. L. Wheeler, R. D. Dowdler, R. K. Williams, J. G. Lindbloom, W. L. Morris, W. T. Hooper, M. A. Jontra, W. F. Meiers, V. D. Wyatt, V. D. Hooper, G. G. Carr and H. D. Hendrickson, at their regular time and one-half rate of pay, seventy (70) hours each.

EMPLOYEES' STATEMENT OF FACTS: D. F. Homewood, L. L. Isaccs, R. A. Woods, D. D. Homewood, J. F. Coffman, J. L. Jones, J. G. Mooney, H. W. Crook, V. L. Wheeler, R. D. Dowdler, R. K. Williams, J. G. Lindbloom, W. I. Morris, W. T. Hooper, M. A. Jontra, W. F. Meiers, V. D. Wyatt, V. D. Hooper, G. G. Carr and H. D. Hendrickson, hereinafter referred to as the claimants, are regularly employed either on an hourly rated basis as communications linemen or communications lead linemen, or they are regularly employed at

The carrier has hereinbefore shown that:

- (1) The erection of buildings, such as the prefabricated houses herein involved, has never belonged to communications department Electrical Workers but, to the contrary, when performed by carrier forces, is covered by the agreement between this carrier and its employees represented by the Brotherhood of Maintenance of Way Employees and has traditionally and customarily been performed by employees subject to that Agreement and
- (2) All of the necessary wiring in connection with the towers and buildings herein involved was performed by this carrier's employees of the electrician class.

It is therefore obvious that the maximum which the employees herein involved might claim is the number of hours spent by the contractor in the erection of the metal towers complete with dish pylons, reflectors and concrete footings therefor, a total of 560 hours as indicated in the carrier's "Statement of Facts". The carrier, however, wishes to repeat emphatically that such claim is not supported by either the rules of the shop crafts agreement or by past practice. To the contrary, those rules and practice support the carrier's handling in the instant dispute.

In conclusion, the respondent carrier respectfully reasserts that the claim of the employees in the instant dispute is entirely without merit or support under the shop crafts' agreement and should, for the reasons stated herein, be denied in its entirety.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

The claims are posited on the positions that the Carrier denied the claimants—members of the Electrical Workers of the Communications Department—work which was properly within the purview of their agreement, when the Carrier awarded a contract to an outside contractor for the erection and building of seven micro-wave towers.

The Division finds, upon review of the entire record, that the applicable provisions of the Agreement were not transgressed by the Carrier's action. Rule 119 (a), (b), and (c), upon analysis is more susceptible to the construction that the claimants' duties were to build and maintain normal routine communication equipment rather than to do such specialized work as erecting high micro-wave towers. There is grave doubt from the record whether the building of the micro-wave towers in question qualifies as line construction work.

This conclusion is buttressed by the evidence that the Carrier since 1952 had employed outside contractors to build 23 micro-wave towers ranging in height from 60 to 160 feet, without the Organization's entering any protest. Nor does the record effectively challenge the Carrier's categorical statement that it does not possess the equipment, facilities, or the employes with the know-how to build these towers. Nor does the fact that the claimants maintain and service these towers after they are built by outside contractors militate against the Carrier's position, because there may well be a material difference between the constructing and the maintaining of such towers.

The Division also finds persuasive evidence for the Carrier's position, Appendix "B" to General Agreement of July 11, 1945 which is part of the present Shop Crafts Agreement, because this Appendix indicates that the parties contemplated situations whereby the Carrier might be compelled to contract with outside contractors for the performance of unusual and intricate jobs. The erection of the micro-wave towers comes within such a classification.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 26th day of March, 1964.