

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

MISSOURI PACIFIC RAILROAD COMPANY

(Guy A. Thompson, Trustee)

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

1. That the Carrier violated Agreement in effect by engaging and assigning an outside contractor to construct concrete driveways around freight depot, concrete curbing and drainage near roundhouse, and concrete runways around and through the freight car shed at Poplar Bluff, Missouri in September and October, 1944;

2. That the senior Assistant B&B Foreman shall be paid the difference between what he received as Assistant B&B Foreman and that which he should have received as a B&B Foreman; the senior B&B carpenter shall be paid the difference between what he received as a B&B carpenter and that which he should have received as an Assistant B&B Foreman; the 12 senior B&B helpers shall receive the difference between what they received as B&B helpers and that which they should have received as B&B carpenters, during the period that the contractor was assigned to perform B&B work at Poplar Bluff;

3. That the members of the B&B crew that is ordinarily assigned to and whose members live at Poplar Bluff and who while the outside contractor was performing work to which they were entitled at Poplar Bluff, their home station, were required to work on the line away from their home station, shall be reimbursed for cost incurred in boarding away from home in outfit cars during the period that the contractor was assigned to perform B&B work at Poplar Bluff.

EMPLOYES' STATEMENT OF FACTS: On or about September 15, 1944, certain work in connection with installation of concrete driveways near the freight house, runways around and through car shed, curbing and drains at Poplar Bluff, Missouri was assigned to and performed by an outside contractor.

This outside contractor employed approximately fifteen men in connection with this work from on or about September 15 until October 20, 1944, inclusive.

Agreement effective July 1, 1938 between the Carrier and the Brotherhood is by reference made a part of this Statement of Facts.

It is also desired to point out to the Board that at least four of the members of Gang No. 3 did not live at Poplar Bluff.

In conclusion Carrier submits that a careful examination of all the facts involved coupled with a careful consideration of the intent and purpose of the Agreement between the parties:

1. Will not reveal any arbitrary or unreasonable act on the part of the Carrier,
2. Will not reveal any employee to have been injured or deprived of any rights or benefits accorded him by the agreement, and
3. That the claims herein should be denied.

OPINION OF BOARD: From September 21, 1944 to October 19, 1944, the Carrier engaged an outside contractor to construct concrete driveways around the freight depot, concrete curbing and drainage near the roundhouse, and concrete runways around the freight car shed at Poplar Bluff, Missouri. The Organization contends that the work belonged to employees under the Maintenance of Way Agreement and that its assignment to a private contractor was a violation of that Agreement.

The Scope Rule of the Agreement provides in part:

"Scope. These rules govern the hours of service and working conditions of all employees herein named in the Maintenance of Way Department and sub-departments thereof (not including supervisory forces above the rank of foremen) as follows:"

Then follows a list of employees in the Bridge and Building Department including foremen, assistant foremen, carpenters, helpers, laborers and others. There also appears in the record a Memorandum of Agreement, identified as Decision No. MW-95, under date of September 15, 1941, wherein it was mutually agreed that certain work would be assigned to employees under the Maintenance of Way Agreement including

"(g) The installation and repairing of concrete runways."

There also appears in the record a letter agreement under date of December 31, 1943, identified as Decision No. MW-116, which is in part:

"All work incidental to contracts that have heretofore been let to contractors covering general repairs to and/or painting of station buildings, upon which actual work has been commenced, as of this date shall be continued to completion.

"No additional work of this nature in the Maintenance of Way Department shall be let to outside contractors by the Carrier prior to discussion between the Carrier and the Employees to analyze the situation, facts and requirements, and explore the possibilities respecting procedure to accomplish the work."

There can be no question that the work here involved was that which was usually and traditionally performed by Maintenance of Way employees. The Memorandum Agreement of September 15, 1941, supports this statement in explicit language and the letter agreement of December 31, 1943, specifically provides that such work shall not be contracted out prior to discussion to analyze the situation, facts and requirements and explore the possibilities respecting procedure to accomplish the work. This latter provision was not complied with in the instant case.

It is the contention of Carrier that it was necessary that the work contracted out be performed before the winter season, that it endeavored to obtain additional help without success, that its attempt to organize a new gang was futile, that it had bulletined similar positions upon which there were no bidders, and that regular assigned employees were engaged in other

necessary work and could not be taken from it to perform the work contracted out.

We do not deem it necessary to discuss the situation in which the Carrier found itself in attempting to get the work done other than to say that it agreed in plain and unequivocal language not to farm out this type of work without discussing it with the employees in an attempt to work the matter out. Failure to comply with this Supplemental Agreement constitutes a violation thereof and subjects the Carrier to the payment of all wage losses sustained by the employees growing out of the violation.

The members of the B&B Gang living at Poplar Bluff contend that if the work had not been contracted they would have been working at home instead of boarding in outfit cars away from home. They claim they should be reimbursed for the cost of board while away from home during the time the contractor performed the work. We think this claim is too speculative. While the contracted work belonged under the Agreement there is no assurance that these employees would have performed it under the circumstances shown. Even if they had performed the work, it is very possible that they would have been required to perform the pile driving work they did do in which event the cost of board would have been incurred. We do not think that the record shows that the contract violation was the proximate cause of the incurring of the board bills for which reimbursement is asked.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Carrier violated the Agreement as shown in the Opinion.

AWARD

Claims 1 and 2 sustained. Claim 3 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 23rd day of May, 1946.