

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

SOUTHERN RAILWAY COMPANY

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

- (1) That the Carrier violated the provisions of the current agreement when it furloughed B & B Mechanic H. B. Turner and contracted the work of making repairs to the Freight Agent's office at Knoxville, Tennessee;
- (2) That B & B Mechanic H. B. Turner be allowed twenty-eight (28) days pay at the B & B Mechanic's rate by reason of being furloughed for twenty-eight (28) days between the period May 15 to June 24, 1946, while the work of repairing the Freight Agent's office at Knoxville, Tennessee, was being performed by employees of the City Lumber Company.

EMPLOYEES' STATEMENT OF FACTS: During the period May 15 to June 24, 1946 B&B Mechanic H. B. Turner was furloughed because of force reduction for a total of twenty-eight (28) work days. He was furloughed on May 15, 1946, was off nine (9) days, was recalled on May 26, 1946, worked five (5) days, was again furloughed on May 31, 1946, was off nineteen (19) days and was recalled on June 24, 1946. On or about April 25, 1946, the Carrier entered into a contract with the City Lumber Company, Inc., Knoxville, Tennessee, for the construction and installation of a new counter, new railing, and two new gates in the Freight Agent's office at Knoxville, Tennessee.

On or about April 26, 1946, the Carrier entered into a contract with the Leon Herndon Company, Inc., for the sanding of the floor of the Freight Agent's office and also for the laying of linoleum.

The counter, railing and gates were constructed at the plant of the City Lumber Company and were transported to the Freight Agent's office in sections where construction was completed. Work was started on this construction at the plant of the City Lumber Company on or about April 30, 1946, and the installation was made between May 30 and June 5, 1946. The Leon Herndon Company completed its contract on or about June 18, 1946.

The Carrier has, in its repair shop at Knoxville, all of the equipment necessary to perform the carpenter work required, which was performed by the City Lumber Company. The Carrier also has all of the equipment necessary to perform the work performed by the Leon Herndon Company, excepting a sanding machine, and had the Carrier so desired, it could have either rented or purchased such a machine.

For all of the reasons given, the claim should be denied, and the carrier respectfully requests that the Board so decide.

(Exhibits not reproduced.)

OPINION OF BOARD: The Brotherhood claims that the Carrier violated the terms of their Agreement when it furloughed B & B Mechanic Horace Dewey Turner and contracted the work of making repairs in its Freight Agent's Office at Knoxville, Tennessee, to the City Lumber Company. It asks that Turner be allowed pay for the twenty-eight days that he was furloughed between the 15th of May and the 24th of June, 1946, because thereof.

The record establishes that the claimant, Horace Dewey Turner, a B & B mechanic, was furloughed by the Carrier for nine days immediately following May 15, 1946, and again for nineteen days immediately following May 31, 1946, or a total of 28 days, because of force reduction. The Brotherhood claims that his being furloughed was improper because it was due to the Carrier contracting work, within the scope of their Agreement, to be performed by those outside thereof. This work consisted of the construction and installation of a counter, railing, and two gates in the Freight Agent's Office at Knoxville. This work was let to the City Lumber Company, Inc., of Knoxville, on April 25, 1946.

The actual work of constructing these items was done in the shops of the City Lumber Company. They were then brought to the Freight Agent's Office and there assembled and installed to replace the old counter, railing, and gates which had been removed. The work in the shop was commenced on April 30, 1946, and the assembling and installing thereof in the Freight Agent's Office was done between May 30 and June 5, 1946. The counter, railing, and gates were constructed according to plans prepared by the Carrier. All work of constructing, assembling, and installing was done by employees of the City Lumber Company, who were, of course, not covered by the parties Agreement. Materials were furnished by the company.

The first question presented by this record is, did the Carrier have the right to contract for the construction and installation of this counter, railing, and these gates, which are office fixtures?

It is well settled by the Awards of this Board that work covered by the Scope Rule of an agreement cannot be taken away from the employees covered thereby by contracting that it be performed by others, who are outside of the agreement, without violating the rules thereof. See Awards 180, 323, 360, 757, 1020, 2701, 2819, 3060, 3219.

Rule 1, Scope, of the parties' Agreement provides:

"These rules govern the hours of service and working conditions of the following employees as represented by Brotherhood of Maintenance of Way Employees:"

The list following includes that of mechanics.

The Carrier claims that the nature of this work brings it within that line of Awards where we have said that from the very nature of the work involved it can be said that the Carrier does not possess sufficient equipment and skill to perform it under the exigencies of the situation prevailing and with which it is required to deal. See Awards 2812, 2338, 2465, and 3206.

We do not think the facts bring it within that category. It is apparent from the record that the Carrier had the necessary equipment in its repair shop at Knoxville with which to do the work; that while there might be some question as to the claimant's qualifications to do finished cabinet work, it is apparent that the Carrier had men in its Maintenance of Way forces at Knoxville who were qualified to do it; that the materials needed were not of such a nature but what the Carrier could have purchased them on the open market; and that the need therefor was not so great but what it could have been constructed by these men within time.

However, under like or comparable Scope rules, we have said it reserves all work usually and customarily performed by the class of employees covered thereby. See Awards 2701 and 2812.

This is summarized in Award 2819 as follows:

“(1) that said Scope Rule embraces all work in which employees of the class were customarily engaged at the time of the negotiation and execution of this Agreement;

(2) that said Scope Rule does not, however, embrace services involving projects which require skilled forces, or equipment that the Carrier does not possess and would not be justified in acquiring and maintaining because of the rare occasion which these would be used; and

(3) when its conduct in respect to contracting work is challenged, the burden is on the Carrier to justify its action.”

The work here involved is not repair work of fixtures, as contended by the Brotherhood, which type of work the record establishes has always been done by the employees of the Maintenance of Way Department. We find it to be the replacement of fixtures by the construction and installation thereof. The Carrier has established that this latter type of work has not been customarily performed by Maintenance of Way employees but it has been customarily contracted for, as was done in the instant case. Under the facts we do not think this work, in view of our holdings, is within the scope of the Brotherhood's Agreement and, consequently, the Carrier did not violate the Agreement by contracting for its performance by the City Lumber Company.

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 did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 26th day of March, 1948.