

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
CHICAGO AND NORTH WESTERN RAILWAY COMPANY**

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

(1) That the Carrier violated the provisions of the effective agreement by assigning or permitting employes of Henry Danischefsky, General Contractor, to perform work necessary in connection with the extending of a concrete platform at the Milwaukee Passenger Station during the period December 2, 1946, to December 5, 1946, inclusive;

(2) That the following employes of the B&B Department be compensated at the pro rata rate for an amount of time equivalent to that required by the employes of the contracting company to perform the above mentioned work;

George P. Schuh
A. Mueller
R. Nielsen
Frank Slater
Paul Juhnke
Alvin Koelsch

Gustave Kuppig
John Taylor
Gerhard O. Mueller
Leemond Luebke
Carl Brammer
R. W. Miller;

(3) That each employe referred to be paid for his proportionate share of the total time worked by the employes of Henry Danischefsky, General Contractor, during the period December 2, 1946, to December 5, 1946, inclusive.

NOTE: The Employes in their claim as set forth in their notice of intention to file specify the dates on which the contractor worked at Milwaukee Passenger Station as being December 2, 1946 to December 5, 1946, inclusive; but now have accepted the Carrier's dates of November 30 and December 2, 3, and 4, 1946, and therefore wish to correct the claim in this respect.

EMPLOYES' STATEMENT OF FACTS: During the period November 30 and December 2, 3, and 4, 1946 inclusive, the Carrier assigned or permitted employes of Henry Danischefsky, General Contractor, to perform work necessary in connection with the extending of a concrete platform at the Milwaukee Passenger Station. During the period involved, the Carrier had, in its employment, approximately twelve B&B mechanics assigned to the territory of which the Milwaukee Passenger Station is a portion. Work of this nature and type has heretofore and subsequently been performed by B&B forces.

Agreement between the parties dated April 1, 1936, is by reference made a part of this Joint Statement of Facts.

platform constructed in 1944 under a similar contract. The work in connection with the construction of the platform extension was performed by the employees of the contractor on November 30, December 2, 3 and 4, 1946. During the period involved the carrier had in its employ 12 bridge and building employees assigned to the territory that included Milwaukee, Wisconsin, all of whom were employed the full measure of their assigned working hours.

POSITION OF CARRIER: Work of the nature involved in connection with the construction of the extension of the concrete platform at Milwaukee has, to a limited extent, been performed by employees of the carrier; however, new construction of this type has generally been handled by contract to outsiders better equipped to perform the work. As indicated above, the concrete platform to which the extension was made in 1946, was constructed by an outside contractor in 1944. There was no claim presented account that work being let to an outside contractor, neither was there any contention on the part of the employees or their authorized representatives that the performance of such work by employees of the contractor was in violation of the provisions of schedule rules agreement with the maintenance of way organization. The work of extending the platform at Milwaukee Passenger Station in 1946 was let to a contractor for the reason that the carrier's bridge and building forces could not handle that work and also adequately take care of the necessary regular maintenance requirements. The twelve bridge and building employees were not deprived of employment as a result of the construction of the concrete platform extension having been let to a contractor. All of those employees, with the exception of two who laid off account illness on December 2, 1946, worked full time during the period November 30 to December 4, 1946, inclusive. In fact, two of the men each worked overtime on two days during that period.

It is the position of the carrier that the claim should be denied for the following reasons:

1. The work involved was not such that had been recognized as belonging exclusively to employees of the railway company. It was new construction work of a nature that had in the past been let to contractors without a contention on the part of the employees that such action was in violation of the provisions of the maintenance of way schedule rules agreement.
2. The work was let to a contractor by the carrier due to the nature of the work and the amount involved, as well as the fact that the bridge and building force of the carrier could not handle such work and also adequately take care of the necessary regular maintenance requirements.
3. There was no loss of employment by any of the employees involved as a result of the work having been let to a contractor.

OPINION OF BOARD: This is a companion case to Award 4158. The principles applicable to a decision of this case are the same as those expressed in the Opinion of the Board in the aforesaid award. We view the construction of the extension of a platform at the Milwaukee Passenger Station in the same light as the construction of the concrete roadway involved in the previous case. This view is taken, however, only because of the special circumstances and surrounding facts in these two cases and is not intended as an indication that this Board feels that all new construction work is outside the Scope of the Agreement.

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: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 8th day of November, 1948.