

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Mortimer Stone, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

ILLINOIS CENTRAL RAILROAD COMPANY

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

(1) That the Carrier violated the agreement by not assigning to Section Foremen John Huff and Don Crawford and eleven Section Laborers to work of installing the drain tile on Millwood and Caneyville Sections, Kentucky Division, on May 30, 1945;

(2) That the above referred to claimants be reimbursed for all monetary loss suffered by them because of the Carrier's improper action.

JOINT STATEMENT OF FACTS: On May 30, 1945, Decoration Day, the claimants, Section Foremen and Laborers on the Millwood and Caneyville Sections of the Kentucky Division, performed no service for the railroad company. On that day, however, and for a period both prior and subsequent to May 30, 1945, Young and Greenawalt, contractors, Chicago, were engaged by the Carrier in the original installation of corrugated metal 8" pipe at sixty-nine (69) locations in four groups of drainage systems on the two sections. Millwood section is from mile posts 73 to 80, and Caneyville is from mile posts 80 to 88. The installations varied in length from 17 to 118 feet, and their depth from the base of the rail varied from 5 to 30 feet at locations shown hereafter:

North of Mile Post 74	Lateral Number	Length in Feet	Depth at Inlet in Feet from Base of Rail	Depth at Outlet in Feet from Base of Rail
74 plus 543	1	24	6	8
74 " 585	2	24	6	8
74 " 620	3	24	7	9
74 " 659	4	24	6	8
74 " 700	5	24	6	8
74 " 744	6	24	6	8
74 " 778	7	24	5	7
74 " 815	8	24	5	7
74 " 855	9	20	6	8
74 " 894	10	20	7	9
74 " 930	11	24	7	9
74 " 982	12	24	7	9
74 " 1012	13	22	7	9
74 " 1050	14	22	7	9
74 " 1088	15	22	7	9
74 " 1134	16	19	7	9
74 " 1165	17	31	7	10

5. That the Carrier's engineering staff did not possess the specialized training and experience required to plan and direct the work.

6. That the claimants did not possess the specialized training and experience necessary to perform the work.

7. That the work, being hazardous in nature, had to be performed by men especially trained to know and avoid those hazards.

8. That the work, consisting of the installation of four intrarelated systems of drainage units, could not be segregated to permit Carrier's employees to be integrated with contractor's forces in performing the work.

9. Claim is not based on any rule of the agreement, hence it is in effect a request for a new rule—which the Board does not have authority to grant.

10. Carrier had the right to contract work of the nature herein involved.

11. The agreement was not violated.

12. It has been a practice of many years for Carrier to contract work of the character involved in this case.

13. Carrier is charged by law with operating efficiently and economically. The carrier is not in position to perform periodical work of this nature efficiently and economically.

(Exhibits not reproduced).

OPINION OF BOARD: Carrier contracted outside the Organization 69 installations of drainage pipe, in depths from 5 feet to 30 feet, requiring 138 days for completion and costing \$21,675.00. On Decoration Day, May 30th, 1945, Claimants performed no service for the Carrier, and claim here is predicated on their right to perform work on that day on that installation project.

The applicable principles have been repeatedly declared. As said in Award 4671, "Generally, it hardly needs to be said, the Carrier may not contract out work embraced within its collective agreements. However, those agreements deal with realities and are given a practicable construction, and it is recognized that wherever, without neglect of the Carrier in proper maintenance of its equipment and forces, it is required to perform a task of such magnitude or specialization or essential danger or time requirements, that it is not feasible for the Organization to furnish or procure the labor and skill or not feasible for the Carrier to furnish or procure the equipment for the adequate performance of the task, then the work may be contracted out."

Here the Carrier sets out, among other matters with supporting data, that drainage problems are related to soil composition and condition and to geological formations and climate; that many technical procedures were required with use of special tools and devices, including trenching machines, not possessed by the Carrier; that speed in operation is essential to prevent earth movement; that the work was hazardous by nature; that the specialized necessary equipment would seldom be in use and required trained personnel in its operation, and that such work on that property has always, and over a long term of years, been performed by contractors specializing in such work. It relies particularly on a letter agreement appearing in the submission which we do not deem controlling here, and consequently shall not consider.

Without denial of the Carrier's statements, generally, except to state their opinion that the frequency of such work would justify the purchase of necessary equipment, the Committee contends that all these matters are irrelevant for the reason that their claim in the instant case does not concern the installation work as an entire task but only for the right to work on that job for the one day claimed at digging and backfilling with picks and shovels. In the statement filed by the Employees at the hearing, it is said:

"It is only for one day's work that this claim is made. On the one day in question our regular forces were equipped with the proper tools and had the necessary skill and experience to do the back-filling that was required on that day. The Carrier's lengthy argument relative to the specific skill required, the soundings and borings into the soil, and the technique of analyzing the conditions have no place in this docket."

The question of the Carrier's right to contract out the entire drainage installation is not before us. Claimants have eliminated that issue. So assuming, we think the Carrier could not in reason be held to anticipate that on any particular day the contract work would require pick and shovel work of digging and filling, or to arrange with the contractor for use of Carrier's laborers to perform work thereon for that particular day. We agree with the Carrier that the statement in Award 3206 is in point, that: "While it is asserted that the air compressor operator could have done the work performed by the Contractor's air-compressor man, we think that it would be rather difficult to divide the project into the small component parts; that the contract as a whole being outside the scope of the Agreement, it would neither be expedient nor wise to place small obstacles in the path of management and thus limit its discretion and judgment and cause friction and discord and perhaps the failure of the entire project."

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 Agreement was not violated as alleged.

AWARD

Claims (1) and (2) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 21st day of March, 1950.