

Award No. 5470

Docket No. MW-5523

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee.

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CHICAGO AND NORTH WESTERN RAILWAY COMPANY

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

- 1.) That the Carrier violated provisions of our agreement by assigning or permitting employes of the contractor to perform the work of erecting concrete block yard office building at Patterson Street, Madison, Wisconsin.
- 2.) That the employes of the B&B Department whose names are shown below, be compensated at the pro rata rate for an amount of time equivalent to that required by the employes of the contracting company in performing B&B employes' work.
- 3.) That each employe hereby making claim be paid his proportionate share of the total time worked by employes of the contracting company during period contractor's employes were used in performing the above mentioned work.

Walter J. Lampe	S. B. Grey	Frank Sikorski
Wm. Babbitt	Stanley Graykowski	Leo Ortekowski
Roy H. Clark	Ed. Holton	G. T. Doering
E. N. Jessessky	J. H. Richmond	L. Miller
R. M. Ames	H. A. Westphal	H. W. Goz
Anthony Clark	Darby Knudson	Chas. Clark
John Sikorski	Frank Margis	George Pfeifer
Eugene Schuppel	H. Holz	H. Parr
D. Sylvester	F. Kluzik	Geo. J. Nissen

JOINT STATEMENT OF FACTS: On various days during the period August 1, 1949 to October 31, 1949, the Vogel Construction Company was assigned to erect a concrete block and frame Yard Office building between the main line and Yard tracks at Patterson Street, Madison, Wisconsin. This building was erected to replace a frame structure Yard Office.

This concrete block Yard Office is approximately 20' x 32', one story high, with brick chimney and has an asphalt shingle type roof. The foundation and floor are of concrete construction. The interior of the building is

OPINION OF BOARD: Carrier contracted with the Vogel Construction Company for the construction of a new concrete block and frame yard office building at Madison, Wisconsin. The building was 32 feet by 20 feet, one story high, with a brick chimney and an asphalt shingle roof. The foundation and floor were concrete. The partitions were of wood and concrete block construction. The ceiling was constructed of fibre board panels. The Organization contends that this is work that belongs to B&B employees and that they should be compensated for its loss.

The applicable portion of the scope rule of the Maintenance of Way Agreement provides:

"Employees (not including supervisory officers above the rank of foremen) engaged in or assigned to building, repairs, reconstruction, and operation in the Maintenance of Way Department."

It is the contention of the Carrier that it has been the practice on this railroad to contract all new construction. It contends also that it did not have employees with the necessary skills to build this yard office. The record will not sustain a finding that a practice existed which permitted the farming out of all new building construction work. There is some evidence that competent brick layers and stone masons could not be found among Carrier's B&B forces. But we point out that no such survey was made immediately prior to the contracting of the work nor does the Carrier allege any attempt to recruit the necessary forces. The construction of this building was not a project of great magnitude nor one requiring highly skilled employees. It is shown that similar work has been done by B&B employees. No attempt was made to work the matter out with the Organization and to thereafter give this Board the benefit of such negotiations. The record does not indicate that B&B forces could not have been increased or that any emergency existed which would justify the farming out of this work.

It will be noted that the Carrier has contracted with employees for the performance of building, repairs, reconstruction, and operation in the Maintenance of Way Department. The burden is upon the Carrier to show that conditions exist which permit the diversion of the work to a contractor. The principles involved are set forth in Awards Nos. 4701, 4833, 4888, 5151, 5152. An affirmative award is required.

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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 21st day of September, 1951.