Award No. 5487

Docket No. MW-5416

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

J. Glenn Donaldson, 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 when it assigned to a contractor the construction of a new coal chute at McComb, Mississippi in May of 1948;

(2) That the following Bridge & Building Carpenters: Ben Wooten, Foreman, Carpenters Julius Turner, Jim Jackson, Will Bates, Vertice Dunaway, Thomas Shoelkelford, Willis Keen, Wilbur Beard, Carpenter Helpers Dave Thomas, Clarence Patterson, Joe Turner, Isiah Washington, Lee Cochran, Thad Wells, Less Butler, Alfred Gayton be now compensated a number of hours at their respective rates equal to the number of hours worked by the employes of the contractor in the performance of the above referred to work.

EMPLOYES' STATEMENT OF FACTS: In the spring of 1948 a contract to erect a concrete coal chute was let by the Carrier to the Ogle Construction Company. The employes of the contractor who constructed the coal chute hold no seniority with the Carrier under the provisions of the effective agreement.

While this construction work was being performed by the Ogle Construction Company, three of the claimants involved in this instant case were laid off by the Carrier in force reduction.

This coal chute was constructed at McComb, Mississippi, and its construction was necessitated because the coal chute formerly located at this location was destroyed by fire.

The Agreement in effect between the two parties to this dispute, dated September 1, 1934, and subsequent amendments and interpretations are by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: The Scope Rule of the Agreement reads as follows:

"SCOPE

This schedule governs hours of service and working conditions of all employes in the Maintenance of Way and Structures Department, except:

4. That the work, being specialized in nature, had to be performed by especially trained men.

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

6. The agreement was not violated, and accordingly claim should be denied.

OPINION OF BOARD: It is contended by the Organization that the Carrier violated the Agreement when it assigned the construction of a new coal chute to a private contractor. The Carrier defends on the grounds that the project involved a special line of work, different from that usually performed by B&B employes; that it included intricate form building and the assembling of the hoisting machinery and mechanical apparatus. It was designed, furnished, fabricated and installed by a company, Carrier states, who specializes in coal handling facilities.

The construction was one of forty new steel or concrete coal chutes constructed since 1923 in seven states by private contractors without complaint from the Organization. The chute, which was completely new, including footings, replaced a timber chute destroyed by fire. It cost $57,522 and took five and one-half months to build. Carrier contends that this type of work is excepted from the Agreement by virtue of a letter agreement of April 21, 1938, which provides, in part:

> "1. Original construction work usually handled by contractors, for which regular forces are not equipped, is not within the scope of Rule 38 or any other rule in the Schedule of Rules and Working Conditions Governing the Several Classes of Employes in the Maintenance of Way and Structures Department effective September 1, 1934, when such work is done by contractors and their forces."

The Organization concedes that the designing of the coal chute is not work included in the scope of its Agreement. It contends, however, that the Carrier's forces were skilled and capable of doing the work according to plans and specifications furnished. The Carrier answers that it does not have the plans nor the qualified and experienced engineering and other forces to design and construct such a chute and that it could not be constructed piecemeal; that skills of the type needed could not be recruited or used system-wise as a "whole line" B&B gang without inviting a claim of the sort here involved, and that, after all, the instant claim is for B&B carpenters working out of McComb, Mississippi, who presume to be able to handle the work.

We must determine the intended meaning of the phrase "Original construction work usually handled by contractors, for which regular forces are not equipped" appearing in the letter agreement quoted, supra. If the word "original" was used in the sense of work that was novel, i.e. creatively new, not copied, for which the regular forces are not equipped, i.e., with skills as well as tools and machinery, then after one or more chutes were built by private contractors, support would be given to the Organization's position. But since this agreement was entered into, twenty-five similar chutes had been constructed by outside forces without objection by the Organization. This fact leads us to believe that the parties intended by use of the word "original" to mean "new" and it was used to distinguish new work from maintenance and reconstruction. That this was a type of new work usually handled by contractors is well evidenced by the record. Therefore it would seem that the construction of steel or concrete coal chutes, or coaling stations of the mechanical type here involved, has been taken out from under the Agreement by the parties.

A further persuasive factor going to the denial of the claims, is that such a project does not lend itself to division into its component parts and the parceling out of a part of the work to the Carrier's forces. The responsibility of a private contractor for proper operation of the completed mechanical chute which he designed and fabricated, might be lost to the Carrier by claim of improper assembly and installation if done by others.

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 Employes involved in this dispute are respectively carrier and employes 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.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 27th day of September, 1951.