

Award No. 5521

Docket No. MW-5478

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

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

(1) That the Carrier violated the effective agreement when it assigned a General Contractor to paint the remodeled portion of the 12th Street Record Building during the period March 31 to April 9, 1948.

(2) That Bridge and Building Painters A. T. Knott, A. C. Williams, and B. C. Moan be paid at their respective straight-time rates of pay for a proportionate share of the total man-hours consumed by the Contractor's forces in the performance of the above referred to work.

EMPLOYEES' STATEMENT OF FACTS: Between March 31 and April 9, 1948, the Carrier assigned to a General Contractor the work of painting the remodeled portion of the 12th Street Record Building.

A claim was filed in behalf of Painter A. T. Knott, A. C. Williams and B. C. Moan for sixty-four (64) hours each at the Painter's pro rata rate of pay because the work was improperly assigned to a General Contractor.

Claim was declined.

The agreement in effect between the two parties to this dispute, dated December 1, 1946, and subsequent amendments and interpretations are by reference made a part of this Statement of Facts.

POSITION OF EMPLOYEES: The Scope Rule of the effective agreement reads as follows:

"Rule 1. These rules govern the hours of service and working conditions of all employees in the Maintenance of Way and Structures Department, including Roadway Equipment Machines, Water Service and Welding employees, not above the rank of foreman. This agreement does not apply to Signal, Telegraph and Telephone Maintenance Departments and Clerks; nor does it apply to part-time positions for which amounts of fifty (\$50.00) per month or less are paid."

In conclusion, the Carrier asserts that:

1. The remodeling work performed by the contractor was a proper subject of an independent contract involving work which for the most part is outside the agreement applicable to employees represented by the Petitioner.
2. The employees' representative admits that it was proper to contract the small amount of Bridge and Building work involved in the general contract.
3. Since it was proper to contract the remodeling work, the Carrier was not required to separate the contract into its small component parts for the purpose of parceling out the small amount of incidental painting to the claimants.
4. The Carrier's position is unequivocally supported by the principles adopted by the Third Division in awards cited by the Carrier.
5. With these irrefutable facts and circumstances present, Petitioner's claim is totally lacking in contractual substance and is clearly contrary to the principles established by the Third Division and must, in all things, be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: We have previously held that claims involving only a small integral part of work contracted out are not sustainable if the entire project, considered as a whole, was properly subject to being contracted out. See our Awards Nos. 2819, 3206, 4753, 4776 and 5304.

In this case the claim covers only the painting performed by a general contractor as an incident of the alteration of a building and the installation of various fixtures and equipment therein under a lump sum contract. There is no allegation or showing that upon consideration of the project as a whole it was not properly subject to being contracted out. Hence the claim is without merit.

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.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 17th day of October, 1951.