Award No. 5848
Docket No. MW-5705

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul N. Guthrie, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS

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

(1) The Carrier violated the effective agreement when they assigned a General Contractor to dismantle the road bridge and foot bridge at Laclede Station Road and rebuild the road bridge during the year 1949;

(2) Bridge and Building Carpenter forces; Masonry and Concrete forces; Iron Worker forces (working under the jurisdiction of Foreman James Dosing), and Bridge and Building Painter forces be reimbursed as follows because of this improper assignment of work;

(3) The above referred to Bridge and Building Painters be paid at their respective straight time rate of pay for 8 hours each; the Bridge and Building Carpenter forces, Masonry and Concrete forces and Iron Worker forces be paid at their regular straight time rate of pay for an equal proportionate share of the remaining man-hours consumed by the contractor's employes in the performance of the above referred to work.

EMPLOYES' STATEMENT OF FACTS: During the latter part of 1949, the Carrier assigned a General Contractor to remove the old Laclede Station Road Bridge and foot bridge that crossed over the St. Louis Terminal Railroad Tracks in the City of Maplewood, St. Louis County, Missouri.

The old Road Bridge that was removed by the General Contractor's employes was approximately 27 feet wide and 108 feet long. The old foot bridge was approximately 6 feet wide and 108 feet in length. The concrete piers that carried the old bridge were not removed. After the removal project was completed, the General Contractor increased the width of the old piers approximately 8 feet and also added approximately 2 feet to the height. New steel work such as girders and center posts were installed. These girders rested on the reconstructed concrete pedestal that had carried the old bridge and upon the new steel center posts that were installed on each side of the single track railroad. A steel railing was placed on each side of the bridge and a lower steel railing was installed to provide a foot walk along one side of the bridge area. The deck of the bridge was covered with iron matting and a concrete floor was poured, using ready mixed concrete.

All of the above listed work was performed by the employes of the General Contractor, who consumed approximately 3000 man-hours while so

we had contracted numerous jobs between December 16, 1919 and that date), when the then General Chairman of the organization contended that the contracting of work was a violation of the Scope Rule of the agreement when we had employes holding seniority who were out of work; in other words, employes who had been furloughed account force reductions. The management recognized the propriety of that complaint and entered into a letter agreement with the organization **restricting the carrier's right to contract work when furloughed forces were available.** That letter agreement, covered by correspondence exchanged between March 25 and November 1, 1939, is attached as Exhibit "A." It is still in effect although the agreement of December 16, 1921 as revised December 21, 1924 has been superseded by the agreement of November 15, 1940 as revised July 26, 1949.

No exception was ever taken by any organization representative to the contracting of work **when furloughed employes were not available** from November 1, 1939, after execution of the letter agreement referred to, until the instant claim was filed although more than 200 jobs had been contracted in the interim.

POSITION OF CARRIER: The work was contracted because it had to be done and we did not have necessary force to do it. There were no furloughed employes at the time.

The letter agreement included as Exhibit "A" permits the contracting of work when we do not have competent furloughed employes available, consequently the claim falls of its own weight.

All data submitted in support of Carrier's position has been presented to the duly authorized representative of the Employes and made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: This dispute concerns the action of the Carrier during the year 1949 in contracting out to a General Contractor the dismantling and rebuilding of the Laclede Station road bridge and foot bridge over the St. Louis Terminal Railroad tracks in Maplewood, St. Louis County, Missouri. The Petitioner contends that the Carrier violated the Scope Rule of the Agreement and the letter agreement of October 2, 1939, when this work was given to a General Contractor.

The Carrier contends that the Scope Rule does not limit its right to contract work to an outside firm. It is contended also that the letter agreement of October 2, 1939 limited the Carrier's right to contract such work only when furloughed workers were available to do the work in the Bridge and Building Sub-Department.

There is no substantial disagreement between the parties with respect to the facts in this case. It is agreed that the work in question was of the sort which the B&B forces were competent to perform. It is agreed that at the time this contract was let there were no furloughed B&B employes available. There is no contention that specialized or unusual machines which the Carrier would not normally have available were required to perform the work. Therefore, the task before the Division is to interpret the applicable rules in relation to the admited facts.

Basically the Petitioner relies upon the Scope Rule. There appears to be no question but what the Scope Rule encompasses the sort of work that is at issue in this claim. The Third Division has in previous Awards held that work so covered by the Scope Rule could not be contracted out with impunity unless there are specific exceptions or special emergencies justifying a departure from ordinary procedures. Awards 757, 4671, 4765, 4701 and 4158.

Award 757 is of special interest in view of the Carrier's position in the instant case wherein it is stated that it has been a practice of the Carrier to contract such work over a period of many years.

Having considered the Scope Rule in relation to the issue in this case, it remains to be asked whether the letter agreement of October 2, 1939 was in effect an agreed upon exception to the Scope Rule whereby the Carrier could contract work of this sort when furloughed B&B employes were not available. It is true, as contended by the Carrier, that the correspondence between the parties in 1939 leading up to the letter of October 2, made frequent mention of the special problem of furloughed employes. By the nature of circumstances then existing it is fully understandable why special consideration was given to furloughed employes. However, it is well known that over a long period of time the Brotherhood has contended that the Scope Rule made no distinction with respect to furloughed employes. In the instant case the correspondence does not justify the conclusion that the Brotherhood was concerned only with furloughed employes.

If the commitment of the Carrier made in the letter of October 2, 1939 was vague, or lacking in clarity, then it would be necessary to give primary weight to the surrounding correspondence. However, there is nothing vague or ambiguous about the Carrier's statement in that letter. It is straightforward and categorical and cannot be set aside or drastically modified because there was considerable discussion of furloughed employes. The final paragraph of this letter reads as follows:

> "In view of these negotiations and the fact that the organization has not heretofore protested against the practice of contracting some jobs, I do not think you are on good ground in attempting to press claims for certain furloughed employes incident to the Central Belt job. Of course, having been put on notice by the organization, **we will refrain from any contracting in the future** until the question is settled by the National Committee handling it **unless we can convince our General Chairman of the propriety of the action.**" (Emphasis added.)

There are no qualifications of the sort contended by Carrier in this commitment. It must be concluded, therefore, that this letter does not limit the Scope Rule in the manner argued by Carrier.

In view of these considerations and in view of the prior Awards of this Division cited above, it is appropriate that this claim be sustained.

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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 18th day of July, 1952.