

Award No. 6422

Docket No. MW-6478

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Emmett Ferguson, 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) The Carrier violated the provisions of the effective agreement when it assigned the work of replacing two water tanks proper on existing substructures at Fort Dodge, Iowa, and making other general repairs in connection therewith, to a contractor whose employees hold no contractual rights under the effective agreement.

(2) All Bridge and Building employees holding seniority on the seniority district in which the disputed work was performed, be allowed pay at their respective straight time rates, for an equal proportionate share of the total man-hours consumed by the contractor's forces in performing the work referred to in part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: The Carrier has two water tanks on its right-of-way at Fort Dodge, Iowa, located approximately 500 feet east of the passenger station and about 20 feet from its main track, the respective tanks being located approximately 40 feet opposite of each other.

On or about October 22, 1951, forces employed by the W-M Corporation commenced making repairs to the water tanks, which included certain general repair work, in addition to dismantling the existing tanks proper and replacing with new tanks. Work was completed on or about December 1, 1951, the contractor's forces averaging six men daily for the period involved.

Only the tanks proper were completely replaced, it having been determined that the existing supporting sub-structures and foundations were wholly adequate after certain general repairs had been completed.

The Carrier's forces have heretofore performed similar work and all equipment, skills and material necessary to the performance of the disputed work was available to or possessed by the Carrier.

The agreement 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 work herein involved is neither "new" construction nor "original" construction under the generally accepted definition and/or interpretation of those terms. The work was actually of a maintenance character.

OPINION OF BOARD: The question here is whether the Carrier violated the governing rules when it contracted out the erection of two water tanks. The scope rule depended upon by the Brotherhood is significant in excluding Water Works Foremen, repair men and helpers. In addition, the Carrier offers proof that one of these two particular tanks was originally erected by an outside contractor, and that both before and after the effective date of the present Agreement, scores of water tanks were erected on this property by outside contractors.

On the basis of these facts we are of the opinion, that the scope rule of the current Agreement does not give the Bridge and Building Employees, exclusive right to the erection of water tanks and that the rule has not been violated in the present instance.

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 scope rule has not been violated in the present instance.

AWARD

The Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 30th day of November, 1953.