

Award No. 6549
Docket No. MW-6565

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

LeRoy A. Rader, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
THE DENVER AND RIO GRANDE WESTERN RAILROAD
COMPANY

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

(1) That the Carrier violated the effective agreement when they assigned a General Contractor to perform masonry work at the National Car Loading Building, Salt Lake City, on May 10, 11, 14, 15, 16, 17, 18, and 21, 1951;

(2) That Bridge and Building Foreman D. Cook be paid at the Bridge and Foreman's rate of pay for 184 hours; Bridge and Building Mechanic G. Thayer be paid at the Bricklayer's rate of pay for 184 hours, and P. Schoenfeld be paid at the Mechanic Helper's rate of pay for 184 hours because of the violation referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: Prior to May 10, 1951, a Bridge and Building crew in charge of Bridge and Building Foreman D. Cook, constructed an addition to the National Car Loading Building. The work performed by this crew consisted of the installation of concrete footings and flooring, erection of steel frame posts and installation of roof, roofing paper, etc.

When this portion of the building was completed by the Carrier's Bridge and Building forces, it was necessary that the openings be enclosed by the laying of brick masonry walls. A General Contractor was assigned to this portion of the project.

As of May 10, 11, 14, 15, 16, 17, 18 and 21, 1951, the employees of the general contractor performed the masonry work, consuming approximately 552 man-hours while so assigned. The Brotherhood contended that the masonry work was comprehended in the scope of the agreement; that it should have been assigned to Maintenance of Way employees in the Bridge and Building Department, and that the Carrier was in violation of the agreement because of the improper allocation of the work.

Claim was filed in behalf of Bridge and Building Foreman D. Cook, Bridge and Building Mechanic G. Thayer and Bridge and Building Helper P. Schoenfeld, in the amount of 184 hours each at the applicable rates of pay because of the violation referred to. Claim was declined.

There is no merit to this claim and it must be denied.

All data in support of Carrier's submission have been submitted to Organization and made a part of this particular question in dispute. The right to answer any data not previously submitted to Carrier by Organization is reserved by Carrier.

(Exhibits not reproduced.)

OPINION OF BOARD: This dispute involves the contracting of work covered by the Scope Rule as contended by Petitioners. Carrier contracted the work to an outside contractor and it is contended no attempt was made to secure Employees' acquiescence in the assigning of work to individuals not holding seniority rights under the Scope Rule of the effective Agreement.

The Bridge and Building Employees contend that they did a preponderant part of the work required in connection with the building of an addition to the National Car Loading Building at Salt Lake City. The only portion of the work which was farmed out to a general contractor was that of laying brick. That the contention of Carrier that Employees were not qualified to perform the work is erroneous, citing a detailed list of places, and a time record where Employee Thayer, a bricklayer, did this type of work and which was supervised by Foreman Cook. Cited in support of the claim are Awards 5457, 5470 and others.

Respondent Carrier defends on the basis:

(1) Carrier did not have competent employees in its Maintenance of Way Department to perform this skilled work, which was an undertaking not contemplated by the Agreement and beyond the capacity of the Carrier's forces.

(2) A practice extending over a period of thirty-five years.

(3) That the disputed work comes within the category of that recognized by this Board as excluded to employees covered by the scope of the Agreement.

(4) That none of the claimants were adversely affected.

(5) That the claim before us is not a claim for damages but is a claim for "penalty."

Numerous Awards are cited in support of the five items upon which the defense is based. Also numerous projects undertaken by Carrier over a long period of years involving similar construction work handled in the same manner, i.e., given to an outside contractor.

We feel that the work here under consideration does not come within the rules cited by Petitioners. In this claim we are dealing with new construction and the performance of work which by its very nature can only be classified as skilled labor of a definitely technical type. Claims should be denied.

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 claims should be denied in accordance with the Opinion.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 14th day of April, 1954.