

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

LeRoy A. Rader, 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, that:

(1) The Carrier violated the effective agreement when it contracted with outside parties for the construction of concrete foundation, retaining walls and pump bases for Diesel Fueling facilities installed on Carrier-owned property within the confines of the Carrier's Wye tracks at Clinton, Illinois;

(2) Bridge and Building Foreman E. W. Waytenick and Carpenters Fred McGaughey, Frank Burns, C. R. Simmons, H. E. Bennett and M. W. Green, be allowed pay at their respective straight time rates of pay 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: Because of the necessity of supplying fuel oil to the Carrier's Diesel locomotives which passed through Clinton, Illinois, the Carrier had arranged to have tank cars set out on a track at Clinton, from which fuel oil was pumped directly to locomotives as needed.

However, the arrangement proved unsatisfactory to the Carrier, and it determined that its purpose would be better served by installing off-track fueling facilities.

It was subsequently determined that two tank car bodies would be placed on concrete foundations, a short distance away from the track, and entirely within the confines of its Wye track arrangement at Clinton. The tank car bodies would then serve as storage and supply tanks, from which locomotive fuel oil would be supplied to Diesel locomotives. The fueling facilities are wholly surrounded by Carrier-owned tracks, which are installed on the Carrier's right-of-way.

All plumbing and electrical work in connection with the installation of the Diesel fueling facilities was assigned to and performed by employees of the Carrier.

The construction of the necessary concrete foundations, retaining walls (dike walls) and pump bases was assigned to an outside contractor whose employees hold no seniority under the effective agreement.

2) It is the duty and purpose of the Maintenance of Way and Structures Department, and employees of that department covered by the current agreement, to maintain the way and structures, and not to perform new construction.

3) Carrier did not have all the skilled forces and equipment necessary to perform the work.

4) Carrier is not required to piecemeal a contracted project.

5) The Brotherhood of Maintenance of Way Employees has relinquished to the Building and Construction Trades Department any rights it might have had to construction off the right of way.

6) In agreement of April 21, 1938, the Organization has agreed that new construction for which carrier lacks equipment and forces is not covered by the scope of the agreement.

This claim should accordingly be declined because there has been no violation of the agreement.

The contractor commenced work on this project on May 10, 1951, and finished on July 11, 1951. Claim was not filed until August 7, 1951. Without prejudice to our position that there has been no violation of the agreement, under the provisions of Rule 26 of the agreement the Organization is precluded from asserting that any violation of the agreement existed more than sixty days prior to August 7, 1951.

All data in support of carrier's position have been submitted to the employees and made a part of this dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: This dispute arose when Carrier contracted with outside parties for the construction of concrete foundations, retaining walls and pump bases for Diesel fueling facilities installed on Carrier owned property within the confines of the Carrier's Wye tracks at Clinton, Illinois.

Petitioners contending Employees have performed work of this class using tools and equipment owned by the Carrier and the Employees cited are the Scope Rule and Awards 323, 757, 1314, 2701 and 3955 with other awards in support of the claim. Further contending that an exception to such rules is a burden of proof on the Carrier and the burden has not been met on this record.

Respondent Carrier states that these same employees have previously prosecuted before this Board claims based upon a similar proposition and have lost by denial awards, citing Awards 4954, 6422, 6424 and 6541. Also stating that the work contracted out was new construction and that this claim was filed well after the work was completed.

A description of the work is set out in detail with Exhibits, photographs, showing that part of the work consisted of a steel stairway, steel catwalk and iron railings. Carrier further alleges that such work has always been done under contract.

We believe that Employees have the burden of proof in establishing of a violation of the contract and that on this record that burden has not been met. The rule here is general and not specific and the claim asks for a penalty payment to claimants although they apparently were employed at their regular work during the time in question.

In view of previous awards above cited by Carrier, some of recent origin, interpretating this same rule in the effective Agreement on cases filed by these Petitioners has established a precedent on the same. See Award 4954. The work in question is not exclusively guaranteed to and allocated to Petitioners herein and on this record claims must be denied.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties of 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 claims are denied in accordance with Opinion.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 27th day of April, 1954.