Award No. 6662

Docket No. MW-6656

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

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

(1) That the Carrier violated the effective agreement beginning on November 7, 1949, and ending on November 30, 1949, both dates inclusive, when it assigned the work of removing the old station platform at Owatonna, Minnesota, and replacing it with a new concrete platform to a contractor whose employes hold no seniority under the effective agreement;

(2) That Bridge and Building Foreman Walter Deal and each member of his crew 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 while engaged in performing the work referred to in part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: The Carrier decided to replace an existing station platform at Owatonna, Minnesota with a concrete platform and assigned all work in connection therewith to Vince Langer, a general contractor.

The contractor's forces started work on the station platform on November 7, 1949, and it was completed on November 30, 1949.

The contractor's forces consisted of one foreman and eight mechanics. The eight mechanics consumed a total of 798 man-hours in performing the work herein involved. The hours worked on each day by the respective mechanics are as follows:

the contractor's forces while engaged in performing the work referred to in part (1) of this claim."

Should your Board, notwithstanding the evidence showing the work to be an exception to the Scope Rule of the effective Agreement, sustain Part 1 of the claim, it is the Carrier's position that the Organization must show that each of the members of this crew was available for work on the days of claim.

On the basis of the facts presented, the Carrier respectfully petitions the Board to deny the claim.

It is hereby affirmed that all data herein contained is, in substance, known to the Organization and is hereby made a part of the question in dispute.

OPINION OF BOARD: This claim involves an asserted violation of the Maintenance of Way Agreement because of the Carrier "contracting out" the work of removing an old platform at Owatonna, Minnesota, and replacing it with a new concrete platform. According to the Employes' statement of facts the contractor's force consisted of one foreman and eight mechanics who were engaged for 798 man hours in performing the work involved; total labor cost, $1,165.15. According to the Carrier, the total man hours were 700 and labor cost $830.30. This conflict is immaterial for a disposition of this case. These figures are cited merely to indicate that the project was a relatively minor one.

It is a well established principle that a Carrier may not let out to others the performance of work of a type embraced within one of its collective bargaining agreements with its employes. It is not necessary to labor the question of whether or not the instant work was embraced within the scope of the collective bargaining agreement. That is practically admitted by the Carrier who seeks to justify its action herein on the basis that this project should be excepted from the operation of the general principle on the ground that speed was essential in its completion, that certain specialized equipment was required and that it was a practice under the Agreement to contract out this type of work.

The relatively small amount of labor required in the actual project indicates that it could have easily been completed in the required time by Carrier employes, either by a slight augmentation of the Maintenance of Way forces or by the reassignment of the work of the existing force.

The specialized equipment referred to by the Carrier is a device for heating water in the aggregate. The Employes, however, assert that the contractor used water directly from Carrier's hydrant and that the water was not heated in any manner. That assertion was not specifically denied by the Carrier. The Employes further asserted that Carrier does possess the necessary equipment to heat the water and that such equipment is and has been used by Carrier's own forces. This latter statement is not specifically denied by Carrier. Low temperatures for many months of the year are ordinarily experienced in the area in which this Carrier operates. Reason would indicate that some device to enable the performance of concrete work in those low temperatures would be available to its Maintenance of Way forces. These considerations impel the conclusion that there is no basis for excluding the project from the coverage of the Agreement on the ground that specialized equipment was necessary in its performance.

With respect to the asserted practice there were only two instances shown following the current agreement of contracting some floor resurfacing in May 1938. Conceding, arguendo, that a practice could be considered to prevail against the terms of the agreement which clearly contemplates the coverage of this type of work under Rule 1 (Scope), such instances could hardly be considered as establishing a practice.

We find that a sustaining award is indicated. As to the discrepancy with respect to the number of hours worked by the contractor's forces alluded to in the first paragraph of this Opinion, the parties should be able to resolve that without difficulty on the property and are directed to do so.

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 as indicated in Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 3rd day of June, 1954.