

Award No. 7962
Docket No. MW-7597

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

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

(1) The Carrier violated the effective agreement when they assigned the work of rebuilding the roof on a Carrier-owned Building occupied by the Great Atlantic and Pacific Tea Company at Houston, Texas to a General Contractor whose employees hold no seniority rights under the provisions of this Agreement:

(2) The employees holding seniority in the Bridge and Building Department on the South Texas District each be allowed pay at their respective straight time rates of pay for an equal proportionate share of the total man-hours consumed by contractor's forces in performing the work referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: The Carrier owns a warehouse building, located within the confines of the right-of-way lines at Houston, Texas, which is leased to and occupied by the Great Atlantic and Pacific Tea Company.

Commencing on or about June 22, 1953, the work of rebuilding the roof on the aforementioned building was assigned to and performed by a General Contractor whose employees hold no seniority rights under the provisions of this agreement. The work was completed on or about July 7, 1953. The Contractor used an average of approximately six employees in the performance of the above referred to work.

The Carrier's Bridge and Building employees were available and have heretofore performed similar repair work on the aforementioned Building.

The agreement violation was protested and the instant claim was filed in behalf of the employees holding seniority in the Bridge and Building Department on the South Texas District.

The claim was declined as well as all subsequent appeals.

The agreement in effect between the two parties to this dispute dated September 1, 1949 together with supplements, amendments and interpretations thereto are by reference made a part of this Statement of Facts.

terials in constant danger of deterioration and loss. The Bridge and Building forces of the Railroad do not repair refrigerators of this character and are unfamiliar with the application of insulation and the repairing of cold storage facilities. For this reason it was necessary that mechanics skilled in this character of work be employed. The employees have no right to complain about not being permitted to perform work which they were not qualified to do.

All data submitted in support of Carrier's position have been heretofore submitted to the employees or their duly authorized representatives.

The carrier requests ample time and opportunity to reply to any and all allegations contained in the Brotherhood of Maintenance of Way Employees', System Committee's and Employees' submission and all pleadings.

Except as herein expressly admitted, the Missouri-Kansas-Texas Railroad Company of Texas expressly denies each and every, all and singular the allegations of the Brotherhood of Maintenance of Way Employees, System Committee of the Brotherhood, and Employees.

For each and all of the foregoing reasons, the Railroad Company respectfully requests the Third Division, National Railroad Adjustment Board, deny said claim, and grant said Railroad Company such other relief to which it may be entitled.

(Exhibits not reproduced.)

OPINION OF BOARD: It is agreed by the parties that the basic issue in MW-7597 is the same as in MW-7596.

There is one technical difference as to dates in Docket MW-7597. Here Carrier asserts "contract for repairs to this building was made May 14, 1953."

Organization's claim was not filed until August 21, 1953, although Organization asserts, the Carrier offers no denial, that the work itself started "on or about June 22, 1953 * * * and was completed on or about July 7, 1953."

Organization had no direct knowledge of Carrier's signing of a contract, and actually would have no cause for action unless and until the work complained of was actually performed.

We, therefore, conclude that Organization's filing of a claim in the instant case on August 21, 1953 met the requirements of Article 24, Rule 2.

The parties to this dispute, their contentions and the rule at issue are the same as in Companion Docket MW-7596, this day decided by Award 7961, and said Award now is held to be controlling in this docket.

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 Agreement has been violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois this 13th day of June, 1957.

DISSENT TO AWARD NO. 7962, DOCKET NO. MW-7597

Award 7962 is in error for the same reasons assigned by the undersigned in the Dissent to Award 7961, which Dissent is made a part hereof.

/s/ W. H. Castle

/s/ R. M. Butler

/s/ C. P. Dugan

/s/ J. E. Kemp

/s/ J. F. Mullen