Award No. 8757
Docket No. MW-8035

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Sempliner, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CHICAGO AND WESTERN INDIANA RAILROAD COMPANY

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

(1) The Carrier violated the effective Agreement when it assigned a General Contractor to perform the concrete work, and other work incidental thereto, in connection with the remodeling of the 51st Street Coach Yard at Chicago, Illinois.

(2) Each employe holding seniority in the Bridge and Building Department be allowed to 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: In 1953 the Carrier remodeled its 51st Street Coach Yard at Chicago, Illinois.

All of the work except the construction of the concrete runways between the tracks, and other work incidental thereto, was assigned to and performed by the Carrier's forces.

Commencing on or about September 1, 1953 the work of constructing five (5) steel-reinforced concrete runways, approximately 9 feet in width by 1400 feet in length and other work incidental thereto, was assigned to and performed by a General Contractor whose employes hold no seniority rights under this Agreement. This Contract was let on a cost-plus basis.

The work was of the nature and character usually and customarily performed by the employes holding seniority in the Bridge and Building Department.

The Agreement violation was protested and the instant claim was filed in behalf of the claimants.

The claim was declined as well as all subsequent appeals.

The Agreement in effect between the two parties to this dispute dated April 15, 1940, together with supplements, amendments, and interpretations thereto are by reference made a part of this Statement of Facts.

contractors forces covers skills not represented by the organization in all classifications except one. Carrier's forces have never been required to handle a job of this size or type because of the deficiency of skill and available manpower. Certainly the Carrier could not expect to allow its B.&B. carpenters to work in conjunction with the contractor's forces. The A.F. of L. building trades unions have more than once made their position clear in this respect, on a craft jurisdiction basis. To have required the contractor to handle only drainage and other similar installations would have definitely necessitated piecemealing the job, a practice not in conformity with prior Board awards. In Award 4954 your Board stated:

> "The job should be treated as a single unit in determining whether Carrier could properly let the work to an independent contractor."

Also, in Award 5304, it was stated in connection with subdividing the work:

> "The work contracted out is to be considered as a whole and may not be subdivided for the purpose of determining **whether some parts were within the capacity of the Carrier's forces."** (Emphasis added.)

This same principle was applied in Awards 2819, 3206, 4776, 4954, 5304, 5563, 5840 and 6112.

It is evident from the foregoing that this claim is without merit and should be denied. See Awards 5487, 6299, 6300, 6549 & 6706.

All data in support of Carrier's submission have been submitted to the organization and made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant, Brotherhood of Maintenance of Way Employes, claims violation of contract and compensation regarding work performed by Carrier in 1953 remodeling its 51st Street Coach Yard, at Chicago, Illinois. The work contracted out consisted of constructing five steel-reinforced concrete runways, each approximately nine feet wide and fourteen hundred feet long.

The Carrier assigned a large portion of the total remodeling to its employes but contracted out the runways to General Contractor Ellington Miller at a contract price of $364,326.54. The remodeling was extensive and of great magnitude. It exceeded in scope the work involved in building a completely new yard in many instances. In no sense could it be considered as pure maintenance of existing structures, and it was far beyond the capabilities of the 21 men usually employed in the Carrier's applicable department. It is not a question of whether the Maintenance of Way employes could do the work. They undoubtedly could do it if given sufficient time, but the department could not do it, nor was it the department's work.

Award 6299 of this division with Judge Shake sitting is of interest. As here, the organization's claim was based on the scope rule, but in Award 6299, the claim was for work involved in constructing a 22 by 44 foot block building at an approximate cost of $15,000.00. Here, while the figures are in dispute, a calculation based on the employe submission would indicate the claim involved in excess of 63,000 feet of surface approximating forty-two thousand

cubic feet of concrete all to be steel reinforced. On reargument it was pointed out that the instant claim was only for the concrete work, and not the entire contract as let out. There is no requirement that a construction project of this magnitude be broken down into component parts, and in this instance the record does not show that this could be done. The work was done in 1953, and two years later, in 1955 the organization filed the original ex parte submission. While the organization undoubtedly filed and processed a claim on the property prior to the ex parte submission, the record makes no mention of it and gives no detail. Nor is there a showing that the employes were deprived of work. Thus the claim has not the strength of the claim in Award 6299, where prior to the beginning of work, a claim was made, and the carrier proceeded at its peril. The carrier was eminently fair, in that it gave its employes a large portion of the total work of remodeling which also could have been contracted out. This was discretionary, in view of the previous similar work contracted out, and the line of demarcation between employe work and contractor work was one of business judgment reserved to the carrier.

Award 5485 (J. Glenn Donaldson, referee) cited by Claimant, is easily distinguishable from the instant award on the facts. On page 12 of the Award, par. 7:

> "* * * The project was comparatively small; the iron or steel work involved was incidental * * *."

Here the project was not small. Award 5485 does not stand for the proposition for which it is cited. There has been no proof, shown by the Claimant, that the Carrier is in any way attempting to evade or circumvent the Agreement.

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 in accordance with the Opinion, the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 6th day of March, 1959.