

Award No. 8834
Docket No. MW-8274

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

SOUTHERN PACIFIC LINES IN TEXAS AND LOUISIANA
(Texas and New Orleans Railroad Company)

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

(1) The Carrier violated the effective Agreement when, beginning on or about July 22, 1953, it assigned a contractor to the work of repairing Guadalupe River Bridge 178.43, and to perform other work incidental thereto;

(2) Bridge and Building Foreman J. H. Conn, Carpenters H. A. Lehman, Adolph P. Sczech, Marvin H. Bartz, R. G. Harborth, Rudy Joe Boehm, Anton E. Donsback, Carpenter Helpers P. A. Sifuentes, Clifton Grant and F. S. Saucedo each 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 in performing the work of assisting in the unloading and placing of all materials, building scaffolds, assisting in the placing and driving of piling, placing rock around the pier, mixing and pouring concrete, and other miscellaneous Bridge and Building work;

(3) Burro Operator R. H. Nolte be allowed pay at his respective straight time rate for an equal proportionate share of the total man-hours consumed by the Contractor's forces in performing the work preparatory to the driving of sheet piling and the grouting of the embankment where rock, sand and cement were used;

(4) Welder H. M. Harborth and Welder A. D. Anderson each be allowed pay at their respective straight time rate for an equal proportionate share of the total man-hours consumed by the Contractor's forces in performing the cutting, welding and torch work;

(5) Locomotive Crane Operator W. E. Jaynes be allowed pay at his respective straight time rate for an equal proportionate share of the total man-hours consumed by the Contractor's forces in performing the work of driving 3,450 feet of sheet piling;

(6) Dragline Operator B. E. Carr, Dragline Operator Helper H. A. Deloney, Bulldozer Operators W. W. Hughes, B. Baxley, H. A. Deloney and Bulldozer Operator Helper B. J. Gregory each be allowed pay at their respective straight time rate for an equal proportionate share of the total man-hours consumed by the Contractor's forces in performing the work of excavating approximately 3,600 yards of earth and gravel, as well as several tons of rock around both sides of the pier, and grouting around the bridge pier, preparatory to the driving of sheet piling.

EMPLOYES' STATEMENT OF FACTS: The Carrier entered into a contract with Contractors Hall and Redinger of San Antonio, Texas, whose employes hold no seniority rights under the effective Agreement, to perform repair work and work incident thereto on Guadalupe River Bridge 178.43, beginning on or about July 22, 1953.

This work consisted of unloading and placing of all materials building scaffolds, placing of piling, placing of rock around the pier, mixing and pouring concrete, preparing for the driving of sheet piling, grouting of the embankment where rock, sand and cement were used, cutting, welding and torch work, driving 3,490 feet of sheet piling, excavating approximately 3,600 yards of earth and gravel, as well as several tons of rock around both sides of the pier and other miscellaneous work in connection therewith.

All of the above-referred-to work has been customarily and traditionally performed by Maintenance of Way employes, holding seniority rights under the Agreement between the two parties to this dispute.

Claimant employes were available and fully qualified to have performed all of the work necessary in connection with this repair work, however, the Carrier chose to assign the work to outside parties without seeking the approval and concurrence of the Employees.

Claim was filed, and the Carrier has denied the claim throughout all stages of handling.

The Agreement in effect between the two parties to this dispute dated June 1, 1950, together with supplements, amendments, and interpretations thereto are by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: Article I, Rule 1, of the effective Agreement, reads as follows:

"ARTICLE I—SCOPE

Rule 1. These rules govern the hours of service and working conditions of all employes in the Maintenance of Way Department (not including supervisory forces above the rank of foreman) as follows:

Roadway Track Department: Section and extra gang foremen, assistant foremen and section and extra gang laborers.

Bridge and Building Department: Foremen, assistant foremen, mechanics (carpenters, painters and steel bridge mechanics), helpers and laborers.

for which they are claiming penalty pay. Claimants enjoyed full-time employment opportunities with Carrier and were not otherwise denied any agreement rights. No other employees of Carrier sustained any loss or were deprived of any rights or privileges belonging to them under the MofW Agreement. Carrier made a sound managerial decision in contracting the work, in good faith, and in the best interests of the Company and all of its employees. No penalty against Carrier is justified.

The substance of all data and argument included in this submission has been made known to the employee's representative in handling this case on the property, either by correspondence or in conference.

(Exhibits not reproduced.)

OPINION OF BOARD: The record before us shows that on or about July 22, 1953, Carrier contracted with Hall and Redinger of San Antonio, Texas, to make certain repairs, and to protect from further damage, due to floodwaters in 1952, its bridge described as Bridge 178.43 over the Guadalupe River near Seguin, Texas.

As a result of such action by Carrier, the Maintenance of Way employees, under their agreement with Carrier, effective June 1, 1950, made claim for various employees on the premise that such work as contracted out by Carrier was work that had customarily and traditionally been performed by Maintenance of Way employees, and such employees were deprived of such work. Under the provisions of the effective agreement between the parties, the Organization strongly contends that such work, as here alleged, was performed by employees of the contractor in violation of the provisions of the Scope Rule, and they rely on the assertion that Carrier having sufficient equipment and qualified employees to perform the work allegedly denied them, took away their exclusive right to such work, as contended and provided by the Scope Rule.

The record before us contains 170 pages of evidence which has been carefully reviewed. We are of the opinion that Carrier has not violated the provisions of the agreement as alleged. We must accept the judgment of management where there is no showing that Carrier possessed the equipment to do the work complained of. In the case before us Carrier did not possess the necessary equipment required to be used here to properly perform the work required.

It is the general rule that a Carrier cannot contract out work and thus deprive its employees of the right to perform the work, yet we cannot lose sight of the record as shown here that Carrier did not possess the equipment or the facilities to perform the work by its employees. We do not agree with the Organization that such action constitutes a violation of the agreement as alleged. The record before us does not support a sustaining award.

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 Carrier did not violate the Agreement.

AWARD

Claims denied as per Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 21st day of May, 1959.