

Award No. 9625

Docket No. MW-7967

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Thomas C. Begley, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

READING COMPANY

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

(1) The Carrier violated the effective agreement when it assigned a portion of the work in connection with the construction of the new Blandon Cutoff to a General Contractor whose employees hold no seniority rights under this agreement.

(2) Each employe holding seniority rights on the Reading Division to the class of Bridge and Building Department Work performed by the contractor's forces on the Blandon Cutoff 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 Bridge and Building Department work on the Blandon Cutoff.

(3) Each employe holding seniority rights on the Reading Division to the class of track department work performed by the contractor's forces on the Blandon Cutoff 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 track department work on the Blandon Cutoff.

EMPLOYES' STATEMENT OF FACTS: The Carrier constructed approximately five miles of new trackage and re-constructed approximately one mile of existing tracks between Blandon, Pennsylvania and Reading, Pennsylvania, identified as the new Blandon Cutoff.

The work of excavating and filling to the required grade for the new trackage; the installation of the necessary drainage facilities, such as culverts, concrete drainage pipes, concrete face walls, concrete spillways and surface ditches for the new, as well as the old trackage; and the construction of four bridges was assigned to a General Contractor without negotiations with or concurrence of the Employees' Representatives.

The work of constructing the new tracks as well as the re-construction of the old tracks was assigned to and performed by the Carrier's track sub-department employes.

of Way Department, including those employes at Port Richmond, Port Reading and Reading Frog Shop:

Bridge and Building Foremen, Assistant Foremen, Inspectors, Gang Leaders, Mechanics, and their helpers, viz; Carpenters, Painters, Masons, Blacksmiths, Plumbers, and Tinsmiths.

District, Section, Track, Work Train, Extra Gang Foremen, Assistant Foremen, and Sub-Foremen.

Fence Repairmen and all laborers, including Laborer-Truck Drivers in the Maintenance of Way Department.

Fire Equipment Inspector, Port Richmond.

Crossing and other Watchmen, Drawbridge Tenders, Pumpmen, Lampmen, Frog, Switch and Rail Repairmen, Crane and other machine operators, including Chauffeurs."

It will be noted by the Board that this rule merely provides that the rules of the Agreement govern the hours of service, working conditions and rates of pay of employes specified therein. Nowhere in the rule is there set forth the class or character of work employes are to perform. Carrier maintains that there is no provision in the Scope Rule or any other rule of the agreement indicating that Carrier has agreed with the Brotherhood that it has any contractual right whatsoever to perform the work here claimed.

Under the facts and evidence, Carrier submits that the Brotherhood's claim is vague and indefinite and should properly be dismissed by the Board. Subject to the foregoing, Carrier maintains that work performed by contract on the Blandon project is not covered by the effective agreement and has not in the past been reserved for Carrier's Maintenance of Way forces. Therefore, Carrier submits that the claim of the Brotherhood does not have equity or merit and should be denied in its entirety.

This claim has been discussed in conference and handled by correspondence with representatives of the Brotherhood of Maintenance of Way Employees.

(Exhibits not reproduced)

OPINION OF BOARD: The Carrier constructed some 4.1 miles of new railroad and raised, rehabilitated and changed alignment and grade of 3.0 miles of existing railroad. Attendant to this construction was the building of four bridges and a large amount of incidental paving, demolition, culvert and roadwork. Outside contractor forces worked on this project for approximately 15 months. The cost of the project was over \$2,000,000.00 and contractor's bills amounted to more than \$800,000.00. The Carrier's Maintenance of Way Employees laid the ties, installed the rails, applied the fittings and did all of the spiking, ballasting, tamping, and surfacing of the new roadbed on the new grade.

The Employees state that the Carrier violated the Scope Rule of their effective agreement, that they are entitled to this work under past practice, that the Carrier failed to obtain the approval and concurrence of the Employees before it contracted out this work.

The Carrier states that its new construction has always been handled by outside contractors and not by its own Maintenance of Way employees, that new construction was given to outside contractors prior to any agreement that they had entered into with its Maintenance of Way Employees; and after they entered into an agreement with its Maintenance of Way Employees, they have had new construction performed by outside contractors on new lines. The first agreement that they entered into with their Maintenance of Way employees was on January 15, 1936. In the period from 1946 to 1953 the Carrier lists seven other projects which were contracted out in that period and submitted a list of 114 instances where it had let out contracts for major repairs, construction, and reconstruction of bridges from January, 1936 to August, 1955. The Carrier states that its Maintenance of Way forces did not possess the skill necessary to perform this work, nor did the Carrier own the necessary equipment to perform the work in question.

The Scope Rule of the effective agreement does not set forth any precise job or work classification and does not by its language refer to new construction; therefore, under the controlling doctrine of this Board, we must look to see whether or not work of this particular nature was customarily and traditionally performed by the claimants. The Carrier has shown by its evidence that work of this type was contracted out prior to the agreement that it entered into with the Maintenance of Way employees in 1936. The Carrier has contracted out this type of construction from 1936 up to the year 1955. There is no rule in the effective agreement stating that the Carrier must first obtain the permission or approval of the Brotherhood of Maintenance of Way before it contracts out work of this nature. The Carrier is not compelled to rent the type of machinery that was necessary to complete this project because the cost of renting of the machinery would be prohibitive.

We are of the opinion that claimants have not proved that they are entitled to the exclusive right to this work either by agreement or by past practice, and this being so they are not entitled to an affirmative award on this record.

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 this agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of November, 1960.