Award No. 10080
Docket No. MW-8593

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Thomas C. Begley, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

SOUTHERN PACIFIC COMPANY (Pacific Lines)

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

(1) The Carrier violated the effective Agreement when it assigned the work of remodeling Building "G" at San Francisco to a contractor whose employes hold no seniority rights under this Agreement;

(2) Each employe assigned to B. & B. Gang No. 1, during the time the work referred to in part (1) of this claim was performed 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 referred to in part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: The Carrier owns a building, identified as Building "G", at San Francisco, California, which it leases to the Acme Fast Freight, Inc., Universal Carloading and Distributing Company, and Universal Transcontinental Company.

Under the provisions of the lease, the responsibility for the maintenance, repair, and remodeling of this building rests with the Carrier.

Commencing on or about July 1, 1955, the work of remodeling the aforementioned building was assigned to and performed by a general contractor whose employes hold no seniority rights under the provisions of this Agreement.

The work consisted of remodeling the interior; raising and renewing the floor; construction of a conveyor belt for the loading of trucks; alteration of the roof and windows, and other work incidental thereto.

The employes holding seniority rights in the Bridge and Building Subdepartment were available and fully qualified to have performed the work described above, had the Carrier so desired, as evidenced by the fact that this building was originally constructed by the Carrier's B. & B. forces.

The Agreement violation was protested and claim filed in behalf of the Claimant B. & B. employes.

OPINION OF BOARD: There is no dispute between the parties as to the basic facts upon which the instant claim stems. The factual situation is as follows: The Carrier owned and maintained building Shed G involved in this dispute. It leased Shed G to three industries. Upon request of one of the industries, namely, the Acme Fast Freight, Inc. in 1954, the Carrier entered into a contract with the Pacific Pavement Company, Ltd. of San Francisco, for certain remodeling of the facility and for the installation of some equipment in Shed G. The work consisted of laying new concrete flooring over the existing floor, installation of a conveyor system, alteration of doors, colums and scales, and cutting of roof overhang to provide proper clearance. The Carrier paid the cost of the entire project. The work was started on July 1, 1955.

The Organization contends this work was performed by people outside of the effective and controlling agreement; that since the Carrier used employes outside of the coverage of the controlling agreement, that employes assigned to B & B Gang No. 1 during the time that the work was being performed, due to their seniority, should be paid for the time required to or consumed in performing this work.

The Carrier states that it owned the building designated as Shed G in San Francisco, California, and that it is leased in its entirety to the Acme Fast Freight, Inc., Universal Carloading and Distributing Company and Confectioners Traffic Bureau, Inc. and hence, is not used in Carrier's railroad operations. On June 27, 1955, pursuant to request of the Acme Fast Freight, Inc. for modernization of the portion of Shed G leased by them, the Carrier entered into a contract with Pacific Pavement Company, Ltd., located in San Francisco, to perform certain remodeling and installation work. The record is conclusive that it has been the past practice on this property to contract out work of the type here involved on Carrier owned buildings leased to industries. The Carrier states that the identical issue between these same parties has been denied by the Division in Award 9602, hence, that Award controls the disposition of the instant claim.

The Board finds that the Scope Rule contained in the effective agreement does not specify the work covered by the agreement. The principle has been firmly established by prior awards of this Division that in the absence of specifications of the classifications of work reserved by a collective bargaining agreement, all of the work usually and traditionally performed by the classification of employes who are parties to it is reserved to them. The employes have failed to prove that they have usually and traditionally performed remodeling and installation work on the Carrier's leased properties. The Carrier at San Francisco has, since February 14, 1948, performed remodeling and installation work on its leased properties by using outside contractors. Therefore, the Carrier has established by a preponderance of the evidence that by past practice this work has not been usually and traditionally performed by B & B Gangs of the Maintenance of Way Employes. The claim will be denied.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of September, 1961.