

Award No. 10856

Docket No. MW-9662

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Raymond E. McGrath, 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, on May 11 and 12, 1956, it assigned the work of installing and erecting steel I-Beams on Bridge 4/21 on the Colebrookdale Branch, Reading Division, to a General Contractor whose employees hold no seniority rights under the provisions of this Agreement.

(2) The Carpenter Foremen, Carpenter Gangleaders, Carpenters, Welders and their trackmen Helpers and Crane Operators and their Trackmen Helpers on the Reading Division 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 referred to in part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: In 1956, the Carrier decided to rebuild Bridge No. 4/21, located on the Colebrookdale Branch of its Reading Division, and to install and erect steel I-Beams, approximately 48 feet in length, in that portion of the bridge spanning a public road.

All of the work involved, except the installation and erection of the Steel I-Beams, was assigned to and performed by the Carrier's employees.

On May 11 and 12, 1956 the work of installing and erecting the Steel I-Beams was assigned to and performed by a General Contractor, without negotiations with or approval of the employees' authorized representatives.

The Carrier's Maintenance of Way and Structures Department employees were available and have heretofore performed work of a similar nature and character, using equipment provided by the Carrier.

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

possess cranes with sufficient capacity and length of boom to handle the steel spans used in strengthening Bridge No. 4/21, accordingly, the erection and installation of steel beams was performed on May 11 and 12, 1956 by the contractor by using highway truck crane. All other work, such as removing old timber trestles, removal and replacement of bridge ties and track, was performed by Carrier's Maintenance of Way forces on May 11, 12, 13 and 14, 1956.

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, it is the position of the Carrier that the work performed by contractor in connection with changes to Bridge No. 4/21 is not covered by the effective agreement and has not in the past been reserved for Carrier's Maintenance of Way forces. Carrier did not have the equipment necessary for work of the type here involved and, as Carrier's Maintenance of Way forces had no contractual right to such work under the agreement, Carrier could not be required or reasonably be expected to purchase or lease suitable equipment for performance of the work necessary.

Carrier maintains, therefore, that the claim of the Brotherhood does not have equity or merit and should be denied in its entirety.

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

(Exhibits not reproduced.)

OPINION OF BOARD: In 1956 the Carrier rebuilt bridge #4/21, a four-span timber trestle, one hundred twenty feet long, over a public road. The bridge was located on the Cole-Brookdale branch of the Reading Division. Steel I-Beams approximately 48 feet in length were installed on that portion of the bridge spanning the public road.

All trestle, tie and track work was performed by company forces. Contractor's forces fabricated, erected and installed steel I-Beams on the bridge.

The Claimant contends that the Carrier violated the effective Agreement on May 11 and 12, 1956, when it assigned the work of installing the steel I-Beams on the bridge to a General Contractor whose Employees held no seniority rights under the provisions of this Agreement.

There are several issues presented by the record. Carrier asserts that the claim as here submitted to the Board, is vague and indefinite in that it does not identify the individual Employees for whom the claim is made, or set forth specific dates involved. This question has been before this Board many times and especially in the cases which will be discussed later in this opinion. The Board in this case finds that the same question has been before this Board in other cases and the Carrier's position on this point has not been sustained. We do not think it is sustained by the facts and the record in this case, but in view of the ultimate ruling on this claim it is not necessary to further develop our reasoning on this point.

The basic issue in this case is whether or not the work on this property in connection with the repair and changes to bridges has traditionally

been reserved to and considered the exclusive duties of the Carrier's Maintenance of Way Employees.

The Claimants contend that this particular work is covered by the Scope Rule of their Agreement, and rely on other cases that have been submitted to this Board covering this same Agreement and this Carrier, specifically Awards #7836, #7791 and Special Board 285 Award #1 and other awards.

The Carrier relies on another line of awards of this Board covering the same Labor Organization and the same Carrier Awards #10310, 10311, 10300, 10229, 10230, 10174. We think the weight of authority in these previous Reading cases involving similar facts and similar issues is clearly on the side of the Carrier.

The record discloses that there are more than 2100 bridges on Carrier's system, of which more than 1600 are under grade; that is carrying railroad tracks; that all of these bridges, except a few of the smaller bridges were built by Contractors before and after the Brotherhood of Maintenance of Way Employees was certified to represent Carrier's Maintenance of Way forces in 1936. Since 1936 Carrier has continued to contract for construction of and major repairs to bridges. The record discloses a list of contracts for major repairs, construction and reconstruction of bridges between January, 1936 and August, 1955. There are 113 contracts on this list.

After careful consideration of the entire record we think the question before us is pretty well summed up in Award #10230, from which we quote:

"The question involved here concerns the propriety of "contracting out" certain construction and the question of whether or not the performance of the work outlined herein, insures to the employees covered by the effective Agreement.

"This basic question has been before this Board on a considerable number of occasions, with decisions both affirming and denying requests that the work involved in such awards be found in the Maintenance of Way work. While certain broad principles have been enunciated the overall sense of these awards indicates the intention of the Board to apply these broad principles to the then existent facts of record.

"The Board in finding that a Scope Rule, similar to the one involved here was ambiguous stated in Award 7216:

"The question is whether the work performed by the outside contractor belongs exclusively to the Maintenance of Way employees under the Scope rule of their agreement. The scope rule in question is very broad and does not contain any description of the kind of work intended to be covered. This type of question has been before the Board on numerous occasions and the applicable principles have been stated in numerous awards. In short, where, as here, the scope rule is completely ambiguous as to the kind of work covered, it is interpreted to reserve all work usually and traditionally performed by the class of employees who are parties to the Agreement. There then re-

mains to be decided in each case whether the particular type of work involved has been "usually and traditionally performed" by the Claimants.'

"Applying the above reasoning to the present facts we must of necessity conclude that the particular work involved here had not been usually and traditionally performed by Maintenance of Way employees. . . ."

Therefore, following Award 10230 and applying the above reasoning to the present facts in this case we must of necessity conclude that the particular work involved here had not been usually and traditionally performed by Maintenance of Way employees.

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 was not violated.

AWARD

The claim is therefore denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of October 1962.