

Award No. 10986
Docket No. MW-9950

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Levi M. Hall, 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 re-roofing a portion of a building, identified as the Kentucky Shed, at San Francisco, California to the Fidelity Roofing Company whose employees hold no seniority rights under the provisions of this Agreement.

(2) Bridge and Building employees John Motis, J. Aquilina, A. Silveratri, George Bursick, William W. Walters and James Gannon each be allowed eighty (80) hours' pay at their respective straight time rates account of the violation referred to in Part (1) of this claim.

(3) Water Service Mechanic (Tinner) L. R. Keaton be allowed eight (8) hours' pay at his straight time rate account of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The Carrier owns and maintains a building known as the "Kentucky Shed", which is located on the Carrier's right-of-way at San Francisco. This building is ideally located for use for warehouse and shipping purposes, since shipping service is immediately available by Carrier's tracks which directly serve this building. The location of this building and its immediate proximity to this Carrier's transportation services naturally attracts potential shippers by means of an available building for rental which is designed and located ideally for shipping and storage purposes and with a reasonably nominal rental charge with all upkeep and maintenance to be the responsibility of the Carrier.

This "Kentucky Shed" is leased to several firms who do considerable shipping and receiving over this Carrier's lines. Two of said tenant shippers are the "Levi-Zentner Company" and the "Budweiser Beer Company."

Under the provisions of the leases, the responsibility for the maintenance and repair of the aforementioned building rests with the Carrier.

CONCLUSION

The claim in this docket is entirely lacking in either merit or agreement support; therefore, carrier requests that said claim be denied.

All data herein submitted have been presented to the duly authorized representative of the employees and are made a part of the particular question in dispute. The carrier reserves the right, if and when it is furnished with the submission which has been or will be filed ex parte by the petitioner in this case, to make such further answer as may be necessary in relation to all allegations and claims as may be advanced by the petitioner in such submission, which cannot be forecast by the carrier at this time and have not been answered in this, the carrier's initial submission.

OPINION OF BOARD: Except for the description of the building and the assignment of the work, and that the work was performed by the employes of different contractors at different times during the same year, the facts presented in this case and those involved in Award 10722 (Moore) are practically identical and the issue is the same.

As was stated in Award 10911 (Boyd): "When the Division has previously considered and disposed of a dispute involving the same parties, the same rule and similar facts presenting the same issue as is now before the Division, the prior decisions should control. Any other standard would lead to chaos."

The issue involved in this case has heretofore been determined between the same parties adversely to the Petitioner in Award 10722 (Moore) and Award 10080 (Begley) and is consistent with Award 10592 (Hall).

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 has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

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