

**Award No. 10987**

**Docket No. MW-9951**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Levi M. Hall, Referee**

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**

**TENNESSEE CENTRAL RAILWAY COMPANY**

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

(1) The Carrier violated the Agreement when it assigned the work of constructing a yard office building, dimensions 20'x50'x12' high in its Nashville yards near Stanley Street to a Contractor, T. C. Ackers Construction Company, whose employees hold no seniority under the effective Agreement.

(2) Each of the Bridge and Building Foremen, Carpenters, Helpers, and Laborers, holding seniority on the Tennessee Central Railway, be allowed pay at the 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 one of this claim.

**EMPLOYEES' STATEMENT OF FACTS:** Beginning on or about May 9, 1956, construction of the building referred to in part (1) of the Statement of Claim was started by forces employed by the T. C. Ackers Construction Company.

Prior thereto, B&B Department forces had been used in the construction of such buildings for The Tennessee Central Railway Company.

The particular building here involved is of the prefabricated metal type which was erected upon a concrete foundation.

During the time the contractor's forces were engaged in erecting this building, a number of B&B Department employees had been cut off in force reduction; a number of B&B Department employees were in a furloughed status; a number of B&B Department employees were working in a lower pay-rate class than that to which their seniority entitled them. The Carrier made no attempt to recall such furloughed employees or to restore the others to higher ranks such as their seniority entitled them. The positions necessary for the performance of this work were not bulletined.

The instant claim was presented and progressed on the property in the usual and customary manner. The Carrier has denied the claim.

from any standpoint, and Carrier respectfully petitions your Honorable Board that the claim in its entirety should be denied.

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All data submitted herein has been presented in substance to the duly authorized representatives of the Employees and is made a part of the particular question in dispute.

The Carrier is making this submission without having been furnished copy of Employees' petition and respectfully requests the privilege of filing a brief answering in detail the ex parte submission on any matters not already answered herein, and to answer any further or other matters advanced by the petitioner in relation to such issues.

(Exhibits not reproduced.)

**OPINION OF BOARD:** Carrier having concluded it was necessary to erect a new yard office building at Nashville, Tennessee, decided upon a prefabricated steel structure manufactured by Armco Drainage and Metal Products, Inc. Under date of May 3, 1956, the Carrier entered into a contract with T. C. Ackers and Company, as general contractor to do the complete job, including furnishing and co-ordination of all labor, tools and equipment at a cost of \$15,530.00.

Petitioner contends that prior to the construction of the yard office building in question the B&B Department forces had been used in the building of such structures for the Carrier and asserts that the action of the Carrier in assigning this work out to a contractor whose employees had no seniority rights in the Tennessee Central Railway Company was in violation of Rule 35(a) of the Agreement effective September 1, 1942, which is as follows:

"All work of construction, maintenance and repair of buildings, bridges, tunnels, docks and other structures built of concrete, brick, stone, timber or steel, **when done by company forces**, shall be performed by employees in the Bridge and Building sub-department." (Emphasis ours.)

The Carrier maintains that the inclusion of the words "when done by company forces" in Rule 35(a) reserves to the Carrier the right, in its discretion, to contract with outside companies for the erection of buildings when it deems it to be in the best interest of the Carrier to do so, that this was the first pre-fabricated steel structure that the Carrier had ever erected and the terms of the contract included both the assembling and erection of the building. It is the position of the Carrier that whenever practicable it used B&B Department forces in the building of structures, but as a matter of past practice had on many occasions contracted with outside companies for that work.

That on other occasions Carrier had contractors perform office construction work for Carrier is evidenced by a letter addressed to the General Chairman by the Roadmaster which states, in part: "No claim that we had violated the Agreement was ever made on any of the other occasions when we have had contractors perform office construction work for us." Though the Chairman denied that the employees had ever acquiesced in any alleged violations of the Agreement by past practices, he did

not deny at any time during the progress of the claim on the property that in the past the Carrier had contracted with companies for the erection of buildings.

We cannot delete from Rule 35(a) the words "when done by company forces". It is not possible for us to escape the conclusion that they must have been put in the Rule for some reason or purpose. In view of the past practices, it is reasonable to conclude that it was recognized by the parties to the Agreement that it was not always practicable to use B&B Department forces in the construction of buildings. Consequently, when that situation arose, the right was reserved to the Carrier, in its discretion, to contract with companies for the performance of structural work.

Carrier's contention that the claim should be dismissed because it is too general in form and that the monetary claim as presented comprehends that unidentified claimants be allowed pay for unspecified dates for unspecified and indefinite reason is not without some worth but in view of the decision of this Board to disallow the claim on the merits we find it unnecessary to pursue that contention any further.

**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.