Award No. 11118

Docket No. MW-10555

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Phillip G. Sheridan, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY

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 making additions and alterations to the Steel Car Shop at Burnham Yard to the Hammond Construction Company.

(2) Each B&B employe listed on the Pueblo Division B&B Roster of June 1, 1957 (excepting those holding regular positions in the North Yard Ice Plant) 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: Beginning on August 6, 1957, employes of the Hammond Construction Company, none of whom hold any seniority rights under the scope of the subject Agreement, started work of making additions and alterations to the Steel Car Shop at Burnham Yard.

The work consisted of constructing a 96' x 40' addition to the steel shop, said addition to be known as the "fabrication shop"; an addition to the steel car shop of 120' x 64'; relocating the locker room within the existing coach shop; dismantling and moving the partition housing the so-called glazing room; dismantling a frame lumber shed and erecting a 90' x 20' prefabricated metal building in a concrete foundation and constructing a concrete floor therein; constructing a 100' x 35' locker room.

B&B Employes have been assigned to and have performed work of the same character in the past.

Shortly after the contractor's forces started the above-mentioned work, one B&B gang was moved out of Burnham Yard and the remaining B&B gang (Terminal B&B gang) was reduced to a foreman and twelve men on November 1, 1957. The gang was further reduced to foreman and eight men in December,

not be let to contract by the railroad company except by agreement between the railroad Company and the General Chairman."

And obviously, if under the existing agreement Carrier did not have the right to contract out certain work, there would be no need for the employes to seek the inclusion of the rule above quoted in the current agreement. See Third Division Awards 213, 507, 887, 1257, 1397, 2326, 2436, 3727 and 4349.

The Employes may contend as in numerous cases that have been appealed to your Board in the past, all of which have been denied to date, that they have performed certain parts of the work that was necessary to be performed under the contract in question. It has been consistently held by the Third Division that work contracted out may not be subdivided for the purpose of determining whether some part could be performed by employes of the Carrier. See Third Division Awards 3206, 4776, 4954, 5304 and 5563 enunciating this principle.

It will be noted from the Statement of Claim that the claims have been made in behalf of certain unnamed claimants holding seniority in the B&B Department on the Carrier's Pueblo Division. We would like to direct attention to the fact that under the provisions of Agreement of August 21, 1954, Article V, Paragraph (a), effective January 1, 1955 that all claims must be presented in writing by or on behalf of **the employes involved** within sixty days from the date of the occurrence. Inasmuch as the Employes have not been named in this claim, it is not vaild under the Time Limit Rule. See Award No. 40, Special Board of Adjustment No 170; also see Fourth Division Award 1214.

There is no merit to the claims and they must be denied.

All data in support of the Carrier's position have been submitted to the Employes and made a part of the particular question in dispute. The right to answer data not previously submitted to Carrier by the Employes is reserved by the Carrier.

OPINION OF BOARD: The Carrier engaged a private Contractor to make alterations and build an addition to their Steel Car Shop.

The Organization claims their Scope Rule was violated and instituted this claim before the Board.

Rule 1 of the Scope Rule is a designation of the occupations, and lists the positions covered, it does not describe the work to be performed.

We have read the original correspondence utilized by the Organization in an effort to assert their claim. Such evidence contains the allegations upon which they have their claims and we find this quotation:

"All work outlined in this calim is work covered by the Scope Rule of our Agreement and in the past has been covered by Employes holding seniority in the B&B Department."

The above statement is a mere assertion and is not proof that the work was exclusively theirs, and neither is it proof of any specific instances that they have performed this work.

The burden of proof rests upon the Claimants, and the right to this work is an essential element of their claim.

However, in the record before us, we cannot find a single reference to a specific occasion when the Organization performed this work in the past or evidence that it was exclusively their work.

The assertions made by the Claimant are questions of fact that can only be established by competent evidence. Their assertions not being supported by evidence, the claim is 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 11th day of February 1963.