

Award No. 11462

Docket No. MW-9952

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Martin I. Rose, 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 its Agreement with the Brotherhood of Maintenance of Way Employes when it assigned the work of making repairs to its so-called 'Kentucky Warehouse' at San Francisco, California to a General Contractor.

(2) Each employe on B&B Gang No. 1, whose headquarters are in San Francisco, be allowed pay at their respective straight time rates for an equal proportionate share of the total number of 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 Claimants hold seniority in the B&B Sub-department on the Coast Division and are assigned to B&B Gang #1 located on Third Street near Fourth Street in San Francisco, California.

B&B Gang #1 has an assigned workweek of Monday through Friday, exclusive of holidays, with rest days of Saturday and Sunday. Beginning on or about August 1, 1956 the Carrier let out by contract, or otherwise to Elvin C. Stendell, General Contractors, the work of making repairs on the Kentucky Warehouse located on Third Street near Fourth Street in San Francisco, California. The work consisted of putting concrete footings at four feet intervals under the caps with a concrete pier setting on the footings and a stiff leg between piers. The contractor also renewed a portion or all of the floor in the warehouse. The work is divided into; item (1) 112' long by 80' wide and item (2) 129' long by 80' wide. The contractor used four (4) men in the performance of the work. The contract stipulated that the work should be completed within 30 days, however, at the expiration of the 30 days, the work was only about 50% completed. The work was paid for by the Southern Pacific Company as authorized by G.M.C.

The building is located on Southern Pacific right of way and served by Southern Pacific tracks. The work was authorized and contract let by the Southern Pacific Company without negotiating with the Organization.

In addition, indicative of the long standing practice on this property, there is attached as Carrier's Exhibit "A", a partial list of alteration and repair jobs on buildings owned by the carrier but leased to others, which the carrier has contracted out in previous years without exception being taken thereto by the employees.

CONCLUSION

The claim in this docket is entirely lacking in either merit or agreement support, therefore, carrier requests that said claim, if not dismissed, 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 that 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.

(Exhibits not reproduced.)

OPINION OF BOARD: The claim is predicated on the contention that the applicable agreement was violated when, on August 10, 1956, the Carrier contracted out repair work on its so-called Kentucky Warehouse in San Francisco. In support of this position, Petitioner refers to the Scope of the agreement and asserts that the repair work performed by the forces of the outside contractor was work which has been traditionally and historically performed by employees covered by the agreement. The Kentucky Warehouse was leased in its entirety to outside concerns and was used for purposes in no way connected with the operation or maintenance of the railroad.

The issue presented by the claim has been determined adversely to Petitioner by this Division in Awards 10722, 10986 and 11150, each of which involved the parties here. Indeed, denial Award 10722 also involved contracted out repair work on the so-called Kentucky Warehouse and the claim there, like the claim in this case, was for employees on B&B Gang No. 1 with headquarters in San Francisco. Nothing in the confronting record warrants departure from these recent awards.

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.

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AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of May 1963.