

Award No. 11662

Docket No. MW-11182

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS

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 dismantling shelving at Dallas, Texas, moving the shelving to Denison and contracting the work to Cole Construction Company, both in dismantling and reinstalling at Denison; Cole Construction Company employees holding no seniority rights under the provisions of the agreement.

(2) That the employees in the Bridge and Building Department on the old North Texas District, Seniority District No. 4 on the 1958 Seniority Rosters be allowed pay at their respective straight time rate of pay 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.

EMPLOYEES' STATEMENT OF FACTS: The factual situation here involved is essentially set forth in the following quotation from the undersigned General Chairman's letter of April 8, 1958 to the Carrier's Assistant to General Manager, Mr. A. F. Winkel.

"Facts: The Carrier rented or leased a building in Dallas, Texas, many years ago and the Bridge and Building employees built shelving inside the leased or rented building. About three years ago the City, in extending or opening Ross Avenue, destroyed the original building and the shelving was torn down and moved into another rented or leased building. This service was performed by Bridge and Building Department employees. On or about January 15, 1958, the Carrier decided to release the rented or leased building and move the shelving to Denison and place the shelving in the Passenger Station space formerly occupied by a News Company and Restaurant. This was performed, as stated above, by the Cole Construction Company and/or Lumber Company on contract basis. The Carrier's Bridge and Building Department employees who are listed on the 1958 Seniority Ros-

The claim of the Employees and Organization is wholly unsupported by agreement rules, past practices and Awards of the National Railroad Adjustment Board. It is, in effect, a request that the Third Division write a new rule into the controlling agreement providing that the moving of shelving is the work of Bridge and Building Department Employees—a request for something that the Third Division has on many occasions held that it does not have the power to do.

For each and all of the foregoing reasons, the Carrier respectfully requests the Third Division deny the claim of the Organization in its entirety.

* * * * *

All data submitted in support of the Carrier's position have been heretofore submitted to the Employees or their duly accredited representatives.

The Carrier requests ample time and opportunity to reply to any and all allegations contained in Employees' and Organization's submission and pleadings.

Except as herein expressly admitted, the Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas, and each of them, deny each and every, all and singular, the allegations of the Organization and Employees in alleged unadjusted dispute, claim or grievance.

For each and all of the foregoing reasons, the Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas, and each of them, respectfully request the Third Division, National Railroad Adjustment Board, deny said claim and grant said Railroad Companies, and each of them, such other relief to which they may be entitled.

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier contends that the Board does not have jurisdiction because the complaint filed fails to identify the names of the Claimants involved herein and because it does not comply with the time limit provisions as set forth in the National Agreement of August 21, 1954. This Carrier offered similar defenses in other cases before this and other divisions, and they have been rejected. The Board reaffirms its prior decisions. See Third Division Awards 7813 and 8506.

The record presents these facts: A number of years ago Carrier rented or leased a building in Dallas, Texas, in which the Bridge and Building Employees built shelving. The building was destroyed, but the shelving was torn down and moved and erected in another building. This service was performed by the same Employees group. In January, 1958, Carrier again decided to move the shelving; this time to its passenger station in Dallas, Texas. This work was performed on a contract basis by a construction company other than the Bridge and Building Employees.

The question to be determined is whether Carrier had a right to contract the work with an outside construction company without violating the Scope Rule of the parties. The provisions involved are:

"Rule 1.

These rules, in their entirety, constitute an agreement between the Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-

Texas Railroad Company of Texas and the Brotherhood of Maintenance of Way Employees, representing the employees in the Maintenance of Way Department, namely:

* * * * *

"Rule 3.

Bridge and Building Department Foremen, Bridge and Building Department Lead Mechanics, Bridge and Building Department Mechanics (Carpenters, Painters, Steel Bridge Mechanics, etc.) and Bridge and Building Department Helpers."

Carrier set forth the contention that the Scope Rule is non-exclusive, that there is no tradition, custom, and practice reserving this work to the Bridge and Building Employees, and that the specific type of job contracted for was not in the nature of maintenance of way work. Claimant, on the other hand, argues that this work is reserved to the Bridge and Building Employees under the Scope Rule and that their right to perform this work is supported by actual practice.

The Board notes that the record is clear on the fact that the Bridge and Building Employees performed the work on two occasions. Without indicated reasons, negotiations, or change in the Agreement, Carrier contracted for this work with another company. The fact that both parties on two occasions were in agreement as to the application of the Scope Rule binds them to accept the same principle on the third occasion where the situation is similar if not identical. Carrier cannot claim that the very shelves Bridge and Building Employees moved twice on previous occasions are not maintenance of way work under its own interpretation of the Scope Rule and the acceptance of this work performance.

We, therefore, hold that the Carrier violated the Agreement of the parties.

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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 31st day of July 1963.