

Award No. 12009
Docket No. MW-10583

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur Stark, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
SOUTHERN RAILWAY COMPANY

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

(1) The Carrier violated the effective Agreement when, on or about November 12, 1956, it assigned the work of paving the passenger landing at the passenger station at Greenville, South Carolina to Ashmore Brothers, Contractors.

(2) B&B Foreman C. M. Setzer, B&B Mechanics O. F. Rudisill and C. E. Thompson, B&B Helpers J. H. Jarrett and E. L. Pitts each be allowed pay at his respective straight time rate 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: Commencing on or about November 12, 1956, the Carrier assigned a General Contractor, whose employees hold no seniority rights under the provisions of this Agreement, to perform the usual and traditional work of its Maintenance of Way and Structures Department employees at Greenville, South Carolina. Specifically, the work consisted of paving a portion of the passenger landing with an asphalt mixture at the afore-mentioned location, approximately 12 feet in width by 300 feet in length, between the Number 2 main track and the first yard track. Approximately 160 man-hours were consumed by the contractor's forces in the performance of the above referred to work.

The Carrier's Maintenance of Way and Structures Department employees were available, fully qualified and could have efficiently and expeditiously performed the above referred to work.

The Agreement violation was protested and a suitable claim filed in behalf of the Claimants.

The Claim was handled in the usual manner on the property and declined at all stages of the appeals procedure.

Carrier, not having seen the Brotherhood's submission, reserves the right after doing so to make appropriate response thereto and present any other information essential for the protection of its interests.

(Exhibits not reproduced.)

OPINION OF BOARD: At the outset Carrier suggests this claim should be dismissed since the disputed work was not performed at the time the Organization asserts. The record shows: (1) In its claim the Organization alleged an Agreement violation by Carrier when "on or about November 12, 1956 it assigned the work . . . to Ashmore Brothers, Contractors"; (2) On the property the Organization mentioned November 12 through 15 as the days on which the disputed work was performed; (3) The Carrier denied that the work was done on those days; (4) The work was actually accomplished on November 16, 19, 20 and 21, 1956.

Webster's New Collegiate Dictionary defines "about" as "near" or "in the vicinity" or "approximately". November 16 was near enough November 12, in our opinion, to make this a proper claim, despite the failure of the Organization to modify its allegation when confronted with the fact that the Contractor did not work on November 12 through 15, 1956. The Carrier's argument for dismissal is therefore rejected.

What, then, of the merits? The work which was given to an outside Contractor, and which Petitioner claims should have been assigned to specified B&B Department employes, consisted of (1) building up an asphalt curb alongside the southbound main track at Greenville, South Carolina; (2) paving with hot asphalt (mixed in Contractor's plant) part of the passenger station landing between that track and the first yard track. The flat portion of the landing was rolled with a heavy paving roller; the curb was hand tamped. The Contractor furnished all materials and equipment.

This is one of three disputes linked together by Petitioner in its Submission and cited as involving work of the same character:

"As a matter of information, we have submitted two other disputes to this Division which involved work of the character here involved. Those disputes are identified in the records of your Board as Dockets Nos. MW-9327 and MW-9994. In Docket MW-9327, which, incidentally, involved these very same parties, and in Docket MW-9994, which involved another Carrier party to this Agreement, we have introduced evidence showing that work of the character here involved has been usually and traditionally performed by the Carrier's Maintenance of Way and Structures Department employes. We respectfully request that the submissions of both parties in those dockets be, by reference, made a part of the instant docket."

In the two related cases Petitioner and Carriers made the same arguments, cited the same Awards, and presented the same exhibits and evidence as in the present case. The contract is the same in all three cases. The only difference among them is in the actual job itself and this difference is not significant.

Award 10715, rendered on July 27, 1962, denied the Organization's claim in MW-9327. Award 11213, rendered March 16, 1963, denied the Organization's claim in MW-9994. The conclusion expressed in that decision is equally appli-

cable here (recognizing that paving a passenger landing may be slightly different from paving a railroad crossing):

"The position of the parties were fully considered by this Board and we denied the claim in Docket MW-9827 by our Award 10715 (Harwood). We have examined that Award and we can find nothing palpably wrong with it. We can find no good reason to overrule it. The principle therein enunciated was more recently sustained in Awards 11140 and 11141 (Moore). Award 11139 (Moore) cited by Employees is not applicable to this dispute because the work there performed was of a different nature and the facts are not comparable."

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of December 1963.