

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 it assigned repair and remodeling work in the Diesel locomotive repair area of the shop in Atlanta, Georgia to a General Contractor whose employees hold no seniority within the scope of this Agreement.

(2) B&B Foreman H. A. McCarter, B&B Mechanics W. B. Moseley, J. A. Stokes, L. Tompkins, B&B Helpers J. Blalock, M. L. Asbell, B&B Apprentices A. B. Slaughter, W. T. Whitehead and R. N. Shugart each be allowed pay at their respective straight time rates for an equal proportionate share of the total number of man hours consumed by outside forces in performing the work referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The Carrier contracted with the Bryce Construction Company of Birmingham, Alabama to install fire-proofing, ventilation and baffles in the Diesel locomotive repair area of the shop in Atlanta, Georgia. Most-if not all-of said work was then sublet by the Bryce Construction Company to G. L. Curl, subcontractor, also of Birmingham, Alabama. The work consisted of installing sheet asbestos over the ceiling of the diesel repair area, the installation of a fire-wall partition constructed of corrugated aluminum siding and the installation of six ventilators (baffles) in the roof.

All of the material used in said work is readily available for purchase on the open market and the subject work did not require skills, tools or equipment beyond that available to the Carrier from its B&B forces.

The contractor started work on this project on or about December 1, 1956 and completed it on or about January 25, 1957, using four men and a foreman.

Vice Chairman W. L. Norwood personally observed the work in progress and reported:

(d) Claims identical in principle have heretofore been denied by prior Board awards.

(e) Rule 49, providing that no compensation for work not performed, here in evidence, definitely negatives the claim.

Claim and demand being without any basis and unsupported by the plain language of the agreement in evidence, the Board has no alternative but make a denial award.

All relevant facts and arguments here involved in the dispute have heretofore been made known to employe representatives.

Carrier, not having seen the Brotherhood's submission, reserves the right after doing so to make appropriate response thereto and submit any additional evidence which may be necessary for the protection of its interests.

OPINION OF BOARD: At the outset Carrier urges this claim be dismissed because it is too vague and indefinite. Specifically, Carrier points out that no dates of alleged contract violation are mentioned nor are sums of money requested by Claimants set forth. However, there has never been any doubt, during the handling of the claim, concerning the particular contracting of work in the Diesel Locomotive repair area about which Petitioner complained. That being true, the dates on which such work was performed is easily ascertainable (the record shows that it was done in the period December 1, 1956 to about January 25, 1957). The total man-hours consumed by Contractor's forces are equally available and the amounts due Claimants (were the claim to be sustained) could be readily computed. The Carrier's argument for dismissal is therefore rejected.

As for the merits, the record shows that in late 1956 Carrier contracted with Bryce Building Company of Birmingham, Alabama, for the following: (1) Installation of five new corrugated aluminum baffles (suspended on wire cables from steel framework) in the Diesel Electric Locomotive Repair Shop, Pegram Shops, Atlanta, Georgia. These baffles were 80 feet by 25 feet, 30 feet by 9 feet, 86 feet by 8 feet, 78 feet by 38 feet, and 26 feet by 16 feet; (2) Installation of 30,000 square feet of 3/16-inch asbestos fireproofing board to the underside of the wood roof decking. Of this, 3,950 square feet was installed in the Motor Shop (about which Petitioner makes no complaint), and the balance in the Locomotive Repair Shop; (3) Installation of seven new 42-inch power-driven roof ventilators. The Contractor furnished all materials, equipment and labor (including iron workers, carpenters and laborers).

The record indicates further that ventilators and baffles were also installed at Pegram Shop by a Contractor in 1948.

The question of Management's right to contract work under this Agreement has been raised in many prior cases. The case at hand is but one of several arising in or around 1956. The existence of a group of Awards interpreting this Agreement in closely related fact situations makes it unnecessary to consult decisions affecting other Carriers. The parties here are bound by the terms of their Agreement and relevant interpretations by this Board.

After evaluating many Awards submitted by both sides, it is our judgment that those which are relevant, and which must be deemed controlling in the circumstances of this case, include 10715, 11140, 11141 (a sister Carrier

with the same Agreement), 11213 (a sister Carrier), 11525, 11598, 11599, 11645 and 11658.

In essence, these Awards hold that the Organization, in order to support a claim that contracting of work violates the Agreement, must demonstrate with convincing evidence that the Scope Rule, combined with past custom and practice on the property, provides employees an exclusive right to perform the disputed work. In the present case, since such convincing evidence is lacking, the claim must be 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 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.

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.