

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David Dolnick, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
GEORGIA SOUTHERN AND FLORIDA RAILWAY 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 erecting prefabricated depot buildings at Lake Butler and at White Springs, Florida to Contractor J. L. Pitts, whose employees hold no seniority rights under the provisions of this Agreement.

(2) B&B employees L. D. Young, G. G. Thompson, John Story, Jr., Cliff Hart and Julius McLendon each be allowed pay for one hundred eighty (180) hours at his respective straight time rate account of the violation referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: The facts surrounding the subject dispute are substantially set forth in the following quoted excerpt from our letter of claim presentation dated June 6, 1959:

"Please accept this as a time claim for time made by employees of contractor Mr. J. L. Pitts, for the building of prefabricated depots of Lake Butler and White Springs, Fla. in the months of March and April 1959.

I understand that these buildings were finished about April 30, 1959, and are 12x24 feet and about eight feet high.

Please accept this time claim for the following employees, L. D. Young, B&B Foreman, G. G. Thompson, B&B Mechanic, John Story, Jr., B&B Helper, Julius McLendon, B&B Laborer, Cliff Hart, B&B Helper.

For excavation building forms setting anchors mixing and pouring cement for foundations, fourteen (14) hours each for the above named employees.

CONCLUSION

Carrier has proven that:

(a) That part of the claim prior to April 7, 1959, is barred, the Board has no jurisdiction over it and should, therefore, dismiss it for want of jurisdiction.

(b) The effective agreements were not violated as alleged, and the claim and demand which the Brotherhood here attempts to assert are not supported by them.

(c) The point here at issue has long since been conceded by the Brotherhood.

(d) Claims identical in principle interpreting the contracts here in evidence have been denied by the Board.

(e) Denial awards interpreting the contracts in evidence have recognized the fact that over the years Carrier has contracted new construction of the character here involved, and that Rule 61 of the agreement preserved this practice.

(f) Prior Board awards have denied claims where, as here, claimants were on duty and under pay at the time the involved work was performed.

That part of the claim which is barred should be dismissed by the Board for want of jurisdiction. That part which is not barred should be denied for the reason that it is unsupported by the agreement and claims identical in principle have been denied by numerous awards of the Board.

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier purchased prefabricated Steelex buildings and contracted with J. L. Pitts to excavate foundations and to erect a combination freight and passenger building at Lake Butler and at White Springs, Florida. The contractor furnished all tools and equipment, constructed the two buildings, and installed all plumbing, heating, and electrical equipment, as well as landscaping. At White Springs, the contractor also furnished and installed a septic tank.

Petitioner contends that the work done by the contractor "is of the character which has been usually and traditionally performed by the Carrier's Maintenance of Way and Structures Department employes, and such work is definitely embraced within the scope of this Agreement."

The Scope Rule of the Agreement does not define nor describe the work to be performed by the employes therein listed. Under such circumstances it is necessary to determine whether the work claimed is historically, customarily and traditionally performed exclusively by such employes. The statement by Petitioner that the work "has been usually and traditionally performed" by Maintenance of Way employes is not evidence. It is a mere assertion. Similarly, Petitioner's allegation that they "emphatically, categorically, and unequivocally deny that they have acquiesced in any practice of contracting work of the character involved in this dispute" is also an assertion, and not evidence. These statements by Petitioner does establish the fact that proof of historical, customary, and traditional practice is essential to a determination of this dispute.

Carrier has shown that from 1957 to 1960, fourteen depots were erected at different locations over Carrier's System. The year and the locations are in the record. Each was erected by a contractor. No claims or complaints were filed by Petitioner. Also in 1957, Carrier contracted and had depot buildings erected at Sparks, Sycamore and Lenox, Georgia. Petitioner filed a claim, processed it on appeal to Carrier's highest officer, who declined the claim in a letter dated February 12, 1958, but did not further progress the claim. Nowhere in the record does Petitioner present evidence to refute these facts.

On the state of the record, the Board has no alternative but to find that Petitioner has failed to establish by evidence of probative value that Maintenance of Way employes by practice, custom and tradition on the property exclusively performed the work here involved.

The principle here enunciated has been upheld by this Division in numerous Awards involving the same parties, the same Scope Rule, and similar facts. See Awards 11525, 11598, 11599, 11658, 12010, and 12317, among many others.

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 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 11th day of June 1964.