

Award No. 12604
Docket No. MW-12106

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 Jasper and at Jennings, 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 ninety (90) hours at his respective straight time rate, account of the violation referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: On or about May 1, 1959, the Carrier assigned contractor J. L. Pitts to perform work of erecting prefabricated depot buildings at Jasper and Jennings, Florida.

Consequently, the subject claim was presented in a letter reading:

"Valdosta, Ga. July 4, 1959

Mr. R. A. Kelso, Division Engineer
Southern Railway System
Southern Railway Office Bldg.
Atlanta, Ga.

Dear Sir:

Please accept this as a time claim for the following Employees L. D. Young, B&B Foreman, G. G. Thompson, B&B Mechanic, John Story, Jr., B&B Mechanic, Cliff Hart, B&B Helper, Julius McLendon, B&B Helper, for time made by employees of Contractor, J. L. Pitts, building prefabricated depots, at Jasper and Jennings, Fla.

I understand that these buildings was started about May 1st, and finished about June 20, 1959.

(b) The point here at issue has long since been conceded by the Brotherhood, as evidenced by the record here made.

(c) Claims identical in principle have been denied by the Board on numerous occasions.

(d) Denial awards, interpreting the contract 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 effective agreement preserved this practice.

(e) Prior Board awards have denied claims where, as here, claimants were on duty and under pay.

The claim and demand being without basis and unsupported by the agreement, the Board cannot do other than make a denial award, for an award of any other type would be contrary to the terms of the agreement.

(Exhibits not reproduced.)

OPINION OF BOARD: The nature of this claim is similar to the claim in Award No. 12603. Here, the prefabricated buildings were erected by the same contractor at Jennings and Jasper, Florida. In every other respect, the evidence in the record on the issue of sub-contracting is identical.

We have fully analyzed the record and discussed the applicable principle of this Division in Award No. 12603. These are here affirmed.

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 11th day of June 1964.