

Award No. 12803
Docket No. MW-12153

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David Dolnick, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**NEW ORLEANS AND NORTHEASTERN
RAILROAD 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 cutting two openings in the brick walls of the Depot Building at Hattiesburg, Mississippi and the installation of two doors therein to a general contractor whose employes hold no seniority within the scope of the Agreement between the two parties to this dispute.

(2) B&B employes R. N. Hill, E. W. Sisson, L. L. Myers, R. P. H. Traylor, Jim Sisson, A. J. Lawson and J. L. Dillard each be allowed twenty (20) hours' pay at his respective straight time rate, account of the violation referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: The factual situation involved here is set forth in the letter of claim presentation which reads:

“Slidell, Louisiana
February 18, 1959

Mr. W. H. Hoar, Division Engineer
Southern Railway System
Birmingham, Alabama

Dear Sir:

On or about December 30 and 31 of 1958 and January 1, 1959 the A. K. McInnis, Jr. Company of 1320 West Pine Street, Hattiesburg, Mississippi, general contractors, was used to cut two large openings in brick wall of the Hattiesburg depot and to install large doors.

On December 19, 1958 all bridge and building forces were cut off until January 5, 1959. It was during this lay-off that this contract

No right to any work is granted by the specific terms of the Maintenance of Way Agreement in evidence. In the instant case, the contractor furnished the special overhead roll-up type doors and employes to perform the work. They were skilled in the installation of such doors, as well as the performance of brick and plaster work required. There is clearly not any basis for an award of the type which the Brotherhood here seeks. Only a denial award is supported by the written record. The principles of previous Board decisions interpreting the agreement in evidence fully support the Carrier's position and negative the claim and demand which the Brotherhood here attempts to assert.

CONCLUSION

Carrier has shown conclusively that:

- (1) The effective Maintenance of Way Agreement was not violated as alleged, and the complained of work is not work of the character usually, customarily or traditionally performed by maintenance of way employes. Contrary to the position taken by the Brotherhood, the work was new construction work of the character usually, customarily and traditionally contracted. It was not maintenance or repair work performed day in and day out by maintenance of way employes.
- (2) The Brotherhood has conceded that the effective agreement does not restrict the Carrier's right to contract work.
- (3) The principles of prior Board awards interpreting the agreement here in evidence support Carrier's action and definitely negative the claim.

The claim and demand being without any basis whatever and unsupported by the agreement in evidence, the Board has no alternative but to make a denial award.

(Exhibits not reproduced.)

OPINION OF BOARD: After Carrier had rebuilt the freight and passenger facilities into a combination freight and passenger station and division office, and after a new mail room with two overhead roll-up type outside entrance doors were constructed, two additional outside doors to the mail room were built. All of the work was done by contractors. A. K. McInnis, Jr., Inc., a General Contractor, furnished all labor, tools and material and installed the two additional roll-up type doors. The contractor performed this work on December 29, 30 and 31, 1958.

The Claim is for compensation to Claimants for the two and one-half days that it took to install the two additional mail room doors.

There are many Awards of this Division of the Board involving the same parties and adjudicating the right of the Carrier to contract out work. While the findings of this Board are not unanimous, the majority and the latest Awards have held that Petitioner must show with convincing probative evidence, that under a Scope Rule such as we have in this dispute, the type of work here involved is by history, custom and practice reserved to Petitioner. See Awards 12317, 12010, 12009, 11658, 11645, 11599, 11598, 11138 and others.

There is no evidence in the record that by history, custom and tradition employes covered by the Maintenance of Way Agreement alone did this type of work. There are statements in the record by employes that they had done this type of work, that they are capable of doing this work, and that they had helped others do such work. But nowhere do they say that they alone had done this work, nor is there a denial that contractors had done this and other types of similar work.

On the basis of the record, the Board is obliged to find that Petitioner has not met the burden of clearly establishing by probative evidence that the covered employes by consistent practice on this property historically, traditionally and customarily performed substantially the same work.

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 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 30th day of July 1964.