

Award No. 12918
Docket No. MW-12374

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION
(Supplemental)

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
ERIE-LACKAWANNA RAILROAD COMPANY

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

(1) The Carrier violated its Agreements with the Brotherhood of Maintenance of Way Employes when it assigned the work of dismantling the Jersey City passenger station and other facilities at the foot of Pavonia Avenue, Jersey City, New Jersey to a General Contractor whose employes hold no seniority rights under the provisions of the aforesaid agreements.

(2) Bridge and Building Foreman Ralph DiPietro and Bridge and Building Carpenters and Carpenter Helpers:

John Cataldi	Albert Walter	Stanley Brooks
John Juhniewicz	Otto Gleitzman	Joseph Petronico
Jesse Sisco	Thomas Parker	William Dolly
Patrick Dominica	Henry Bukowski	Stanley Kloby
Curtis Dechert	Joseph Dunsheath	Leonard Laskewski
Donald Ormiston	Clifford Mackwell	Joseph Whalen
Patrick Mascia	Boleslaw Karwinski	Thaddeus Kaleta
Martin Snyder	Joseph Jurusik	Albert Graff
Stephen Manorek	Rudolph Schuckman	Herbert Barnes
William Gordon	Fred Fahrenholz	George Cahayla
Natale DeMarco	Daniel Sullivan	Ralph DeMarco
Aligio Francesco	Stanley Kimble	Donald Jorgensen
William Shanley	Vincent Cholopica	Thomas Knapp

and Dockbuilder Foreman Lawrence Buck and Dockbuilders and Dockbuilder Helpers:

William Leba	Leonard Wyble	Andrew Charko
Louis Wyble	Matthew Potaki	Maximilian Kuffner

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 dismantling the buildings and structures, except structural steel, referred to in Part (1) of this claim.

(3) Plumber Foremen Henry Ostrowski and Plumbers and Plumber Helpers:

Wilford Poppleton	Martin Strack	Angelo DeMonti
Thomas Gerchio	James Cassese	Achilles Vignone
Charles Gazzola	Frank Koski	Paul Chrissotimos
Adam Swiderski	Vincent Decio	William Bea
Samuel Cirullo	Joseph Cappoli	Leo Dougherty
Otto Karrer	Joseph Moran	Theodore Sawicz
Henry Lanza	Hubert Roland	Thomas Hennessey
Walter Swedeski	Theodore Dubowik	Robert Esposito

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 dismantling the plumbing facilities referred to in Part (1) of this claim.

(4) Section Foreman A. Guittari and trackmen M. Manzo, A. Giubleo, H. Aikens, J. Witt, C. Brown, Welder Walter Wiykowski. Welder Helper Curtis Douglass, and Crane Operator Walter Perceval 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 dismantling the track facilities referred to in Part (1) of this claim.

(5) Structural Steel Foreman D. P. Rock, Assistant Structural Steel Foreman W. F. Pencek, Structural Steel men G. J. Conklin, G. J. Williams, V. A. Zimmerer, Mack Jolly, S. P. Curcio, H. C. Braisted, E. Kowinsky and Erection Crane Operator E. L. H. Wiegleb 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 dismantling the structural steel referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: The positions of Structural Steel Foreman, Assistant Structural Steel Foreman, Structural Steelmen and Erection Crane Engineer are encompassed within the scope of the Agreement between the parties effective February 1, 1946, hereinafter referred to as the "Department of Structures Agreement", whereas the other positions involved here are encompassed within the scope of the Agreement between the parties effective January 1, 1952, hereinafter referred to as the "Maintenance of Way Agreement."

Under date of June 15, 1959, the undersigned General Chairman addressed the Carrier's Chief Engineer as follows:

OPINION OF BOARD: The Erie Railroad Company contracted for the work of dismantling the Jersey City passenger station and other facilities at the foot of Pavonia Avenue, Jersey City, New Jersey. This building had not been used by Carrier for about six months prior to the arrangements for dismantling.

The Brotherhood of Maintenance of Way Employees makes claim that Carrier violated the existing Agreements when it gave the demolition work to a general contractor. It submits that under the Scope Rule of the Department of Structures Agreement and under Rule 1 (a) of the Scope Rule of the Maintenance of Way Agreement this work rightfully belongs to the employees in whose behalf the claim is filed. It also asserts that this dismantling work was of the nature and character traditionally performed by the employees of Carrier and that the type of equipment utilized by the contractor was available to Carrier. Moreover, it argues that a letter of May 21, 1953, signed by B. Blowers, Chief Engineer of the Maintenance of Way, indicates that it was the intent and purpose of the parties for Carrier to obtain the approval of the General Chairman in situations where certain work was to be performed under contract. It points out that in the midst of discussions pertaining to the question of contracting the dismantling of the Jersey City station, Carrier, contrary to this understanding, proceeded to assign the work to a general contractor.

The Scope Rules of the Agreements are of the general type which do not specifically designate the work involved as belonging exclusively to Claimants. We note that in the past Organization sought to include in the Agreement provision that dismantling work be assigned exclusively to this class of employees, but these proposals were rejected by Carrier. Since we cannot conclude from the Agreements that the work in question is granted exclusively to Maintenance of Way and Bridge and Building Employees, we turn to past practice and custom to determine whether it supports Claimants' allegations of exclusive right to this work. Although some demolition work was performed by the classes of employees involved in the instant claim, the record shows that by far most of the work assigned to contractors.

After studying the letter of May 21, 1953, which Organization presents to support its position that the Chief Engineer instructed that the contracting of demolition work must be preceded by consultation and approval of the General Chairman, we find that the letter does not make it mandatory for Carrier to obtain the consent of the General Chairman. Moreover, we do not consider a letter whose source is an engineer as constituting a modification of the Agreement.

The most significant consideration in our determination of the issue is the question of the status of the facilities. The record clearly shows that the building was completely abandoned for approximately six months and no longer served a railroad function when Carrier contracted for the demolition of the structure and removal of the material from the property. Since the Agreements pertain to work of carrying on Carrier's business as a common carrier, we must conclude that the work of dismantling and removing completely the abandoned property does not fall within the contemplation of the parties. This work cannot be considered maintenance, repair, or construction.

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 Agreement of the parties 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 28th day of September, 1964.