Award No. 13052
Docket No. MW-13182

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

THE NEW YORK, CHICAGO AND ST. LOUIS 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 dismantling the wheel and pattern building (No. 210-13) at Tipton, Indiana, to a general contractor whose employes hold no seniority within the scope of the carrier's agreement with the Brotherhood of Maintenance of Way Employes.

(2) B&B employes C. O. Tidler, E. C. Guy, Fred Bales, William Kattness, Porter Lane, Donald D. Perkins, Donald Skinner, Lloyd Perry, Cleo Badgley, Oliver Hawk, Robert Norbeck, Alvin J. Taylor, Lewis F. Mason, Noel W. Gulley, W. H. Reecer, Thomas P. O'Rourke, Ernest Paul Burch, Harold McDonald, Ozzie Lee and Wiley Coats each be allowed pay at their respective straight time rates of pay for an equal proportionate share of the total number of man hours consumed by the contractor's forces in performing the work referred to in page (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: The factual situation in this case was fully and accurately set forth in the letter of claim presentation which reads:

"April 29, 1960

Mr. R. F. Miller, Bridge & Building Supervisor
Lake Erie & Western District
New York, Chicago & St. Louis Railroad Co.
300 N. Main St.,
Frankfort, Indiana

Dear Sir:

Claim is presented as follows:

Statement of claim.

obsolete, were no longer needed in the operations of the Carrier, and had been abandoned. They were accordingly demolished and hauled away by an outsider who wanted the salvage material.

The Carrier has shown that the claim is wholly without merit and should be declined.

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier, in 1960, decided to dispose of a number of buildings and structures at Tipton and Muncie, Indiana and Lima, Ohio, because they were obsolete and had been abandoned. The entire project was contracted out to a firm specializing in wrecking work. Petitioner claims the right to the work was vested in Carrier's Bridge and Building force employes.

The pertinent provision of the Agreement is Rule 52 – Classification of Work, which, insofar as is material, reads:

> "(b) All work of constructing, maintaining, repairing and dismantling buildings, bridges, turntables, water tanks, walks, platforms, highway crossings and other similar structures, built of brick, stone, concrete, wood steel, and appurtenances thereto, shall be performed by employes in the Bridge and Building Department. This work may be done by contract where there is not a sufficient number of employes available or the railroad company does not have proper equipment to perform it."

The Rule makes clear that the dismantling work here involved was exclusively reserved to the Bridge and Building employes unless there was "not a sufficient number of employes available" or the Carrier did "not have proper equipment to perform it."

The only issue which we find it necessary to decide is whether a sufficient number of employes were available.

The Bridge and Building force on Carrier's Lake Erie and Western District consisted of 23 employes at the time the demolition project was started. During the period of time in which the project was accomplished this force was increased by six additional employes; and, there were no Bridge and Building employes furloughed or in furlough status. This is persuasive evidence that Carrier did not have a sufficient number of employes available to perform the demolition work.

Petitioner argues, in effect, that: (1) Carrier should have hired additional employes to perform the work; or, (2) should have delayed the doing of the work until it could have been performed by Bridge and Building force employes. We find no support for these contentions in Rule 52 (b).

The term "employes" prescribes an existing employer-employe relationship. It cannot be construed as obligating Carrier to create such a relationship by new hires.

The determination as to the time work will be performed is a prerogative of management unless circumscribed by agreement. We do not find a circumscription in the Agreement before us.

We find that Carrier did not have "a sufficient number of employes available" to perform the demolition work described in the Claim. It had, therefore, the contractual right to have the work "done by contract." We will deny the claim.

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 13th day of November 1964.