

Award No. 13987
Docket No. MW-14222

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David Dolnick, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

SOUTHERN RAILWAY COMPANY

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

(1) The Carrier violated the Agreement when it assigned the work of installing floor tile and of constructing and painting a partition in its freight house at Birmingham, Alabama, to a contractor whose employees hold no seniority under the provisions of the Agreement.

(2) B&B Foreman E. V. Rector, B&B Mechanics M. E. Taylor and J. A. Hutcheson, B&B Helper Jack Faulkner and B&B Apprentice L. A. Burnell each be allowed forty-eight (48) hours' pay at their respective straight time rates because of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The Birmingham Freight Association made arrangements with the Carrier whereby the Association could utilize a small amount of space in the Birmingham Freight House as an office.

Before the Association could occupy said space, it was necessary that minor remodeling work be performed. The Carrier assigned this remodeling work to the Brice Building Company, Inc. of Birmingham, Alabama. On October 23, 24, 25, 26, 27 and 30, 1961, the contractor's forces installed a wooden partition approximately 10x18 feet in size, installed asphalt floor tile and painted.

All of the materials used by the contractor were readily available on the open market. The subject work did not require skills, tools or equipment that the Carrier did not have readily available within its Maintenance of Way and Structures Department.

Claim was timely and properly presented and handled at all stages of appeal up to and including the Carrier's highest appellate officer.

The excerpted portion of the findings from Award 18923 is applicable; the claim is denied without passing upon the merits."

The above referred to awards nullify the claim and demand which the Brotherhood here attempts to assert even if nothing else did so.

CONCLUSION

Carrier has proven that:

(a) The effective agreement was not violated as alleged and does not support the claim and demand here made.

(b) The work contracted was not of the character customarily or traditionally performed by maintenance of way employees.

(c) The point at issue has heretofore been conceded by the Brotherhood.

(d) Prior Board awards support Carrier's action.

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

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

OPINION OF BOARD: In this dispute the Brotherhood alleges Carrier violated the effective agreement when in October, 1961, it assigned to a general contractor the work of installing floor tile, radiator and light fixtures, and constructing a partition on the second floor of Carrier's freight depot at Birmingham, Alabama. All labor, tools and materials were furnished by the contractor.

This Division has rendered numerous awards, involving the same parties as in this dispute, adjudicating the right of the Carrier to contract out work. In the majority and the latest of these Awards, the Board has held that Petitioner must show with probative evidence that, under a Scope Rule such as we have in this case, the type of work involved is by history, custom and practice reserved to Petitioner. See Awards 12929-30, 12803, 12603-4, 12317, 12009-10, 11658, 11645, 11598-99, 11138, and others.

There is no evidence in the record that by history, custom and tradition employees covered by the Maintenance of Way Agreement alone performed this type of work. There are statements that B&B employees had done this type of work, and that Claimants were capable of doing the work claimed. But, nowhere do they say that they alone had done such work, nor is there a denial that contractors had performed this and other types of similar work (12803).

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 employees 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 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 30th day of November 1965.