

Award No. 15185
Docket No. MW-15823

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC
RAILWAY COMPANY

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

(1) The Carrier violated the Agreement when it assigned or otherwise permitted outside forces to repair and paint the depot at Georgetown, Kentucky. (Carrier's file MW-20364.)

(2) B&B Foreman R. Coleman, B&B Mechanics L. Smith and B. Reynolds, and B&B Helper R. L. Reed each be allowed pay at his respective straight time rate for an equal proportionate share of the total number of man hours consumed by outside forces in performing the work referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: During October, 1963, the Carrier assigned the work of repairing, remodeling and painting its depot at Georgetown, Kentucky to the Jessamine Lumber Company of Wilmore, Kentucky. This work consisted mainly of repairing windows, doors, screens and gutters and of scraping, cleaning and painting the interior and the exterior.

The work was of the nature and character that has been usually and traditionally assigned to and performed by the Carrier's Bridge and Building forces.

The claimants were available, fully qualified and could have efficiently and expediently performed the subject work, had the Carrier so directed.

The Agreement in effect between the two parties to this dispute dated August 1, 1947, together with supplements, amendments, and interpretations thereto is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: Claim alleges violation of the agreement because Carrier contracted the remodeling of the passenger depot at Georgetown, Kentucky and demands unspecified amounts on behalf of four named claimants who were fully employed during the period involved in the claim and not adversely affected in any manner whatsoever.

sumed by the employees of the Jessamine Lumber Company of Wilmore, Kentucky, who were assigned and performed work such as painting outside and inside, doing general remodeling and repair work on the Passenger Depot at Georgetown, Kentucky during the month of October 1963.

The above mentioned work comes under the Maintenance of Way agreement.

Please advise your decision."

The above quoted letter and other correspondence exchanged between the parties during handling of the dispute on the property, identified as Carrier's Exhibits A through J, are attached hereto and made a part hereof. As clearly evidenced by the record, the claim presented and handled in the usual manner on the property is without basis and unsupported by the effective maintenance of way agreement, and was therefore declined as it was handled through the usual channels on the property.

(Exhibits not reproduced.)

OPINION OF BOARD: Petitioner avers that Carrier violated the Agreement during the period between October 2 through October 13, 1963, when it assigned to a general contractor the work of remodeling, painting and repairing Carrier's passenger depot at Georgetown, Kentucky. All necessary labor, materials, supplies, tools and equipment were furnished by the outside contractor.

Petitioner contends that this work was within the scope and coverage of the Agreement and belongs to employees classified as Bridge and Building foremen, mechanics and helpers, who customarily and traditionally perform such work.

In the first instance, Carrier objects to the Board's consideration of the merits of the case because the claim does not specify the dates on which it alleges the agreement was violated. We do not agree. The Claimants are named and the measure of damages claimed as well as the specific dates during which the disputed work was performed can readily be ascertained from the records of the Carrier.

This is another case between the same parties concerning the "contracting out" of work allegedly belonging to employees covered by the Scope Rule of the controlling Agreement, which does not define the work to be performed by the employees listed therein. Positions covered are listed but no job descriptions are contained in the Rules.

This Board has rendered many Awards in disputes of this nature involving the same parties and similar factual situations. The majority and more recent of these Awards have held that the Petitioner has the burden of establishing through probative evidence that the work "contracted out" is of the type which only employees under the agreement have traditionally and customarily performed. Awards 13987, 12929-30, 12803, 12603-4, 12317, 11525 and others.

In this dispute, the record on the question of customs and practice consists of the assertion by Petitioner that the work described belongs to Claim-

ants covered by the Maintenance of Way Agreement and the assertion by Carrier that such work has not, historically or customarily, been performed by such employees. There is no evidence in the record that the type of work involved is reserved to employees covered by the Agreement through history, custom or practice.

Accordingly, we must find that Petitioner has not sustained the burden of clearly establishing by evidence of probative value that Claimants on this property through consistent practice performed the same kind of work as is here involved. Therefore, the claim will be denied.

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 Agreement 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 20th day of January 1967.