

Award No. 15216
Docket No. MW-14787

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David L. Kabaker, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**THE DENVER AND RIO GRANDE WESTERN
RAILROAD 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 constructing a diesel repair shop, store house and master mechanic's office building in the Burnham Yards, Denver, Colorado, to a contractor whose employees do not hold seniority rights under the provisions of this Agreement. (Carrier's File M-8-63.)

(2) The Carrier further violated the Agreement when it assigned or otherwise permitted roadway machine operators' work in connection with the construction of said diesel repair shop, store house and master mechanic's office building at Burnham Yards, Denver, Colorado, to be performed by forces employed by a contractor and who do not hold seniority rights under the provisions of this Agreement. (Carrier's File M-7-63.)

(3) The following named Bridge and Building Department employees each be allowed pay at their respective straight time rates 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 Part (1) of this claim.

O. S. Dunbar	Armado Sandoval
J. H. Robinson	A. R. Litzenger
Orville Crosley	J. A. Otteson
A. T. Spicer	R. R. Davis
Andrew Albright	F. C. Yarnell
Don Robinson	R. W. Lewis
W. W. Papke	Arthur Dunham
A. L. Grigsby	Marco Clauser
A. N. Wass	Tommy Hurla
Jerry Jones	D. L. Pisarczyk

mented by the Brotherhood of Maintenance of Way Employees, Rules Effective February 1, 1941, including changes and interpretations to date of reissue March 1, 1952, Rates of Pay effective February 1, 1951, is by reference included herein and made a part of this Statement of Facts.

OPINION OF BOARD: On or about January 24, 1963, the Carrier entered into a contract with the Pinkard Construction Company of Denver, Colorado, covering the construction of a diesel repair shop, store house and mechanic's office at Carrier's Burnham Yards, Denver, Colorado.

Claimants contend that work of similar character has heretofore been assigned to and performed by the Carrier's Bridge and Building Department and Roadway Equipment Department employees, who were available, fully qualified and could have expeditiously performed the work, above set forth, had the Carrier so desired.

Claimants allege that all the work involved is within the Scope Rule of the Agreement and that this work was removed without benefit of negotiations with or concurrence of the employees' authorized representative.

Carrier denies that this particular work, involved in the instant claim, has been historically and traditionally performed by the Claimants to the exclusion of all others and that various projects, similar in nature to the instant project, have been let to contractors.

While there is evidence in the record that Maintenance of Way employees have done construction of buildings, none were of the magnitude of the present contract.

The record shows that over the years the Carrier has contracted out new construction work where special equipment, material and skills were required. There is no denial to this defense.

Our conclusion to deny these claims is supported by previous awards between the same parties and Agreement here. See Awards 10255, 11118, 11831, 14525 and 14638.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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

Claims denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION**

**ATTEST: S. H. Schulty
Executive Secretary**

Dated at Chicago, Illinois, this 30th day of January 1967.

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