Award No. 15391
Docket No. MW-15672

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Claude S. Woody, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CHICAGO & EASTERN ILLINOIS RAILROAD 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 erect and install a new heating plant at Oaklawn, Illinois. (Carrier's File MW-6400.)

(2) Each employe on the Bridge and Building Department seniority roster of the Chicago Division be allowed pay at his respective straight time rate for an equal proportionate share of the total man-hours consumed by outside forces in performing the work referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: The Carrier decided to install a new heating plant at Oaklawn, Illinois. The work of remodeling said building to accommodate the heating plant was assigned to an outside contractor, without benefit of negotiations with or the concurrence of the Employes.

This work consisted mainly of the construction of concrete foundations for air compressors, a generator and boilers; the installation of new concrete floors, drains and sewers; the construction of separation walls; and the opening and closing of walls for the entrance of water and sewer lines. The new wall was constructed of concrete blocks and it is approximately nineteen (19) feet high and one hundred (100) feet long.

The subject 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, having often performed similar and identical work, using Carrier owned equipment, in the past.

The Agreement in effect between the two parties to this dispute dated May 15, 1953, together with supplements, amendments, and interpretations thereto is by reference made a part of this Statement of Facts.

On June 4, 1953 the Carrier entered into an agreement with the W-M Corporation of Chicago, Illinois, to construct "a Dormitory Building, at Oaklawn Shops, in the City of Danville, Illinois."

On June 5, 1953 the Carrier entered into an agreement with the Ryan Construction Company of Evansville, Indiana, to construct "an extension to present Yard Office Building at Wansford Yard, immediately north of the City of Evansville, Indiana, to serve as a dormitory."

On October 31, 1956 the Carrier entered into an agreement with the E. H. Montgomery Construction Company, Inc., of Vincennes, Indiana, to construct "a combination Freight House, Office and Dormitory Building at Baker Yard, immediately south of the City of Terre Haute, Indiana," See Award No. 11465.

On April 30, 1957 the Carrier entered into an agreement with the E. H. Montgomery Construction Company, Inc., of Vincennes, Indiana, to construct "a Diesel building at Baker Yard, immediately south of the City of Terre Haute, Indiana."

On June 18, 1964 the Carrier entered into an agreement with the P&H Construction Company, Inc., of Evansville, Indiana, to construct "a yard office at Wansford Yard, immediately north of the City of Evansville, Indiana."

Carrier's Exhibits A through G depict the handling given this matter on the property.

(Exhibits not reproduced.)

OPINION OF BOARD: The claim, as presented, requires us to determine the effect of Article V, Section 1(a) of the National Agreement of August 21, 1954, which provides:

"All claims or grievances must be presented in writing by or on behalf of the employe involved . . ."

The Organization argues that the Carrier abandoned its defense, i.e., improper identification of claimants, by failure to assert it at each level or stage of the proceedings on the property. When such procedural defense is raised at any time before filing a notice of intent to submit the dispute, it has been raised during handling on the property. See Award 14749 (Rambo). We find no abandonment and no express waiver of that defense which was effectively raised at the outset of this dispute.

We have reviewed the numerous awards bearing on the abovementioned issue. Our analysis of those awards reflects a general rule that claimants must be specifically named or otherwise referred to in such a way that they can be readily and definitely identified. If a further dispute will likely ensue in the process of identification then the identification by reference is insufficient.

The Organization's identification of claimants in the instant case was by reference to "Each employe on the Bridge and Building Department seniority roster of the Chicago Division." In Award 11897, Referee Hall prepared the

opinion for this Board which determined that "employes holding seniority in the Bridge and Building Department on the Old North Texas District, Seniority District No. 4, on the 1958 Seniority Roster" was not a proper identification. That award was followed in Award 11898 (Hall), wherein the identification referred to a specific seniority roster. The identification in the instant case was less specific than in the previous cases cited. Other awards relevant to the identification method used in the instant claim are as follows: 9848, 11229, 11230, 11372, 11373, 11499, 11500, 11501, 11502, 11503, 11504, 11855, 11903, 12112, 12113, 12357, 12427, 14316, 14424, 14468, 14469 and 14470.

The record (R-26) shows that the Carrier submitted copies of the pertinent seniority rosters and disclaimed its ability to identify claimants on the property. The record (R-26) shows that the Chicago Division includes all trackage from the Chicago Terminal to and including the Evansville Terminal plus all branch lines between those points — approximately four hundred miles. Carrier further submits and we agree, that under no circumstances would the services of "each employe on the Bridge and Building Department seniority roster on the Chicago Division" have been used to perform the services in question. This, together with our review of the entire record, indicates that considerable diffculty would ensue in sifting out the actual claimants from the potentional claimants named on the seniority rosters.

This claim is dismissed on procedural grounds and, therefore, a discussion of the claim on its merits is not set forth in this Opinion.

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 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 claim, as presented, does not satisfy the requirements of Article V, Section 1(a) of the National Agreement of August 21, 1954.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1967.

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