Award No. 15539
Docket No. MW-15177

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC 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 perform the work of installing bituminous concrete (blacktop) on station platform at Northbrook, Illinois.

(2) Each of the following named B&B employes be allowed pay at their straight time rates for an equal proportionate share of the total man hours consumed by the contractor's forces in performing the work referred to in Part (1) of this claim.

John E. Miller	Oscar Heser
W. L. Meyer	Harvey H. Schrab
Ray Belanger	George Younger
H. E. Schrab	V. K. Sikowski
Clyde Peterson	Harry A. Nowinski
Paul Wallo	A. J. Milz
Emil Honkalo	F. Clausen

EMPLOYES' STATEMENT OF FACTS: On August 21, 1963, bituminous concrete (blacktop) was applied to a station platform which serves the west bound main track at Northbrook, Illinois.

The preliminary work of removing the old paving brick and curbing, of installing new creosoted timber curbs and tie rods, of placing and compacting additional gravel fill and of other work incidental thereto was assigned to and performed by the Carrier's Bridge and Building forces.

However, the work of applying the blacktop to the subject platform was assigned to and performed by the West Asphalt Company, whose employes hold no seniority rights with the Carrier. This work consisted mainly of spreading, leveling and rolling (packing) the blacktop, using a mechanized roller.

On the dates of the instant claim, contractor forces placed 822 square yards of 2 inch thick asphalt at the Northbrook, Illinois station.

It goes without saying that proper equipment and coordination in first applying the special hot primer and then mixing, hauling, placing and rolling the hot asphalt, all of which requires special equipment and trained personnel, is essential to producing pavement which meets all specifications.

The Carrier owns rollers which are used to make cold blacktop surface repairs with small amounts of cold blacktop material at crossings, roadways, etc., however, said rollers are much too small and light to have been used in connection with a project the size of which we are here concerned as they could not have properly compacted the asphalt.

The Carrier also owns trucks, however, they are not insulated nor are they of sufficient capacity to have been used in connection with the work with which we are here concerned.

In other words, the Carrier does not own special equipment such as that utilized by the contractor forces in the performance of the work here involved, the Carrier could not have rented such necessary special equipment except on a fully operated basis and even if we could have rented such necessary special equipment without an operator, the claimants would not have been qualified to operate same.

It is significant that Maintenance of Way employes participated in the preparatory work at the station involved which consisted of removing the old brick paving, altering and installing new timber curbs, placing and leveling additional gravel fill and other work incidental thereto or, in other words, except for the resurfacing they performed all of the other work in connection with altering, raising and resurfacing the station platform involved.

It is significant also that there were no lost earnings on the part of any of the claimants as a result of contracting the work here involved.

There is attached hereto as Carrier's Exhibit A copy of letter written by Mr. S. W. Amour, Assistant to Vice President, to Mr. J. G. James, former General Chairman, under date of February 24, 1964.

(Exhibits not reproduced.)

OPINION OF BOARD: The Carrier in the instant case engaged the services of an independent, outside Contractor to blacktop the Carrier's station platform at Northbrook, Illinois. Maintenance of Way employes participated in performing some of the work in connection with this project, but the actual blacktopping, the use of a "hot mix" as contra-distinguished from a "cold mix," was done by the Contractor, thereby giving rise to this dispute.

It is the Carrier's contention that special equipment and trained personnel were required to handle and apply the hot asphalt paving. The special equipment required as set forth in the record was:

> "A special International Tractor Prime Coat Applicator with heating, pumping and spraying equipment to heat and spray primer materials just prior to placing the hot asphalt.

"Special large capacity, heavy duty dump trucks which are insulated to keep asphalt hot and are used to transport the hot asphalt from contractor's supply yard, where it had been properly prepared, to the site of application.

A special heavy duty International roller to sufficiently compact hot asphalt.

A special Barber Greene paver."

The Petitioner relies principally on Rules 1 and 46 (d) of the agreement. Rule 1 is the Scope Rule and is general in nature. The burden in such cases is on the Petitioner to show by convincing evidence that the work contracted out was exclusively reserved to him based on custom, tradition and practice. On the contrary, from an examination of the record, it is clear that the Carrier has contracted out similar work. As was stated in Award 15335 (House).

"It was employes' burden to prove that work is reserved exclusively to them, before it becomes Carrier's burden to prove justification for contracting such work out; Employes have in this record failed to sustain their initial burden of proof."

We agree with the language and the rationale of Award 15335 (House), and in applying both to the instant case, must of necessity deny the claim.

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 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 28th day of April 1967.

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