

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Edward A. Lynch, 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, on November 23 and 26, 1962, it assigned or otherwise permitted outside forces to perform the work of installing bituminous concrete (blacktop) on the station platform at Itasca, Illinois. (Carrier's Case No. D-1433.)

(2) William L. Couch and all other Bridge and Building employees listed on the 1962 seniority roster for the Dubuque and Illinois Division each 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.

**EMPLOYEES' STATEMENT OF FACTS:** On November 23 and 26, 1962, bituminous concrete (blacktop) was applied to a station platform along the west bound main track at Itasca, Illinois.

The preliminary work necessary to the application of the blacktop was assigned to and performed by the Carrier's Bridge and Building forces.

The work of applying the blacktop was assigned to and performed by the Rock Road Construction Company, whose employees do not hold any seniority rights with the Carrier. This work consisted mainly of spreading, leveling and rolling (packing) the blacktop, using a mechanized roller.

Heretofore, all work of constructing, repairing, maintaining or dismantling of station platforms, irrespective of whether such platforms were surfaced with cinders, wood, brick, granite screenings, cement concrete or bituminous concrete (blacktop) has traditionally and historically been assigned to and performed by the Carrier's B&B employees.

The claimants were available, fully qualified and could have efficiently and expediently performed the subject work, having performed similar and identical work many times theretofore and thereafter and in all cases, used Carrier owned equipment.

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 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 altering and installing new curbs, placing and leveling additional 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 are, as will be shown in "Carrier's Position," no proper claimants in the instant case and, therefore, there were no lost earnings on the part of any Maintenance of Way employes 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, General Chairman, under date of May 15, 1963 and as Carrier's Exhibit B copy of letter written by Mr. Amour to Mr. James under date of June 20, 1963.

(Exhibits not reproduced.)

**OPINION OF BOARD:** A claim identical with that now before us, involving these same parties, at Carrier's Northbrook, Illinois station was denied by Award 15539 (McGovern) of this Division.

Here we have the identical situation at Carrier's Itasca Station.

We will follow Award 15539 and issue a denial Award here. See also Award 15465.

**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 7th day of June, 1967.

Keenan Printing Co., Chicago, Ill.

Printed in U.S.A.