



Award Number 17538

Docket Number MW-18041

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF
EMPLOYES**

THE TEXAS AND PACIFIC RAILWAY 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 pouring a concrete floor in the car shop at Marshall, Texas, to outside forces. (System File—K-310-17).
- (2) Foreman R. L. Robertson, Mechanics G. B. Wilkerson, L. J. Graves, R. J. St. Romain, C. C. Mudford, and Helpers C. H. Jones and E. E. Taylor 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 outside forces in performing the work referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: Beginning March 3, 1967, outside forces performed the work of pouring a concrete floor in the car shop at Marshall, Texas. The area involved in this concrete work was 21,000 square feet. In the letter of initial claim presentation, the Carrier was advised by Assistant General Chairman Hawkes that "This is work belonging to the Bridge and Building Department employes of The Texas & Pacific Railway Company". The truth or accuracy of the aforementioned statement has never been challenged by the Carrier.

B&B forces have heretofore performed concrete work of this character and their ability to perform such work has not been challenged. In the appeal of August 30, 1967 to the Carrier's highest appellate officer we advised:

****The above work is that belonging to the Bridge and Building Department of the Texas and Pacific Railway Company. In June and July, 1965, B&B forces poured and patched three tracks in the carshop at Marshall, Texas. Several years prior to 1965, the B&B forces poured concrete floors in the coach and paint shops belonging to the T&P Railway at Marshall, Texas."

Again the Carrier failed to challenge the truth or accuracy of that statement. Hence, the Employes' statement that work of this character belongs to employes of the Bridge and Building Department remains unchallenged and undisputed.

6. The Organization did not dispute the fact that it has been a common practice to contract construction as well as repair work on this property for many years. During conference the Assistant General Chairman was again reminded that it was a common practice on this property to contract construction and repair work, and he did not deny this fact.

OPINION OF BOARD: Petitioners allege that commencing March 3, 1967 Carrier permitted outside forces to perform the work of pouring a concrete floor in the car shop at Marshall, Texas. Petitioners argue that Carrier was advised by Assistant General Chairman Hawkes, in his letter of initial claim that "this is work belonging to B & B Department Employees", and this statement was never disputed or challenged by Carrier. Petitioners further aver that Carrier rested its defense to this claim that Carrier is not required to do piecemeal work, but that Carrier, after repeated requests to explain "piecemeal work", failed to explain what it was and thus abandoned said defense.

We do not agree with Petitioners that Carrier failed to challenge the statement that the work involved here belongs to B & B Department Employees. This is clearly seen in Carrier's Director of Labor Relations, O. B. Sayers letter of December 6, 1967 to the Assistant General Chairman, T. G. Hawkins, Jr., when he stated in said letter that it has for many years been the practice on Carrier's line to utilize services of construction companies under such circumstances as here involved.

Examination of the Scope Rule herein shows that it is a general Scope Rule, and this Board, in a long line of awards, has therefor consistently held that the burden is upon the Petitioners herein to prove that the work in question has been exclusively performed by B & B Department Employees, system wide, by practice, custom and tradition.

The record shows that Petitioners failed to sustain said burden and therefore we must 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 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.

Claim denied.

A W A R D

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of October 1969.