

Award No. 1038

Docket No. MW-1101

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

STATEMENT OF CLAIM: "Claim of Employees' Committee, first; that the Carrier violated agreement in effect between the Carrier and the Brotherhood of Maintenance of Way Employees, last revised September 1, 1937, when it assigned the work of dismantling one large outside toilet consisting of four compartments, and erecting in its stead four sanitary toilets at Carbon Hill, Alabama, to outside parties who do not come within the scope of the current agreement, nor have seniority rights in the Maintenance of Way Department on the railroad.

"Second; that Carpenters Robert McClanahand, with seniority rights from April 30, 1934 and George A. Bryan, with seniority rights from August 21, 1933, who were laid off in force reduction during the period these outside parties were erecting the buildings in question, be paid at carpenter's rate, for time equal to that consumed by these outside parties in performing this work, or eighty hours each."

JOINT STATEMENT OF FACTS: "The City Commission of Carbon Hill, Alabama, passed Ordinance No. 503 August 2, 1938, which required the Frisco Railway to replace one ordinary outside toilet consisting of four compartments, with four single privies conforming to the design and specifications, rules and regulations of the State Board of Health as set out in the bulletin approved April 19, 1937, entitled 'Plans and Specifications for Approved Earth Pit Privies, Concrete Construction.'

"The Railway made arrangements with Sanitation Officer Walker County Health Department to dismantle the old double station privy and construct four new single privies to replace them to comply with Ordinance No. 503. The Railway furnished all material for construction of the new privies and the W. P. A. furnished the labor. The work was begun December 9, 1938 and completed February 7, 1939, being carried on intermittently during the period. While this work was in progress Carpenters Robert McClanahand and George A. Bryan were laying off as a result of force reduction."

POSITION OF EMPLOYEES: "Article 1, Rule 1, of agreement in effect, captioned 'Scope' reads:

"These rules govern the hours of service and working conditions of the following employees':

Among other classes of employees listed, are:

'B&B Mechanics'

"Article II, Rule 3, reads:

"Rule 3. Rights accruing to employees under their seniority entitle them to consideration for positions in accordance with their relative length of service with the railroad, as hereinafter provided."

"The employes have not since the rule was first adopted in 1922, disputed the right of the Railway to contract construction of new buildings or other like facilities, including the dismantling of old facilities that were a part of the project, except in this instance.

"The work of constructing new station privies for the Frisco Railway at Carbon Hill with WPA labor was a part of a city wide program. Privies were constructed for other persons or firms on the same basis ones were constructed for the Frisco.

"In the latter part of 1935 and continuing thru the year 1936 the state of Oklahoma carried out a program of improving privies particularly making them fly-proof. In this program the work was done by WPA labor, material furnished by the property owner. Privies belonging to the Frisco Railway at fifty-eight stations were improved under this program, all labor being performed by WPA forces, and from one to six privies were involved at each station. No protest was made that this work should be done by railway forces and no request made for revision of Rule 10, Article VI to provide for such work being done by railway forces when new Agreement was made effective September 1, 1937. It was Addition and Betterment work.

"The Interstate Commerce Commission in their Accounting Classifications, issued in accordance with Section 20 of the Act to Regulate Commerce, section 2 (d), defines additions and betterments as follows:

'ADDITIONS are additional facilities, such as additional equipment, tracks (including timber and mine tracks) buildings, bridges and other structures; additions to such facilities, such as extensions to tracks, buildings, and other structures; additional ties laid in existing tracks; and additional devices applied to facilities, such as air brakes applied to cars not previously thus equipped. When property, such as a section of road, track, unit of equipment, shop or power plant machine, building, or other structure, is retired from service and replaced with property of like purpose, the newly acquired property shall, for this classification, be considered as an addition, and the cost thereof accounted for accordingly.

'BETTERMENTS are improvements of existing facilities through the substitution of superior parts for inferior parts retired, such as the substitution of steel-tired wheels for cast wheels under equipment, the application of heavier rail in tracks, and the strengthening of bridges by the substitution of heavier members. The cost chargeable to the accounts of this classification is the excess cost of new parts over the cost of current prices of new parts of the kind retired.'

"The unambiguous wording of the governing rule and the evidence submitted fully support our position that the claim is improper and we request its denial."

OPINION OF BOARD: The claim here is relative to removal of work from under agreement. However, the rule excepts "A. & B." work. The work here described comes under Interstate Commerce Commission classifications of Additions and Betterments and must therefore be denied.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 there was no violation of the agreement.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 1st day of February, 1940.