

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

H. Nathan Swain, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood:

(1) That the Carrier violated the provisions of the effective agreement by contracting certain Bridge and Building work on the Beardstown Division, subsequent to July 1, 1946.

(2) That J. P. Myatt and J. L. Pate be allowed pay at Bridge and Building foreman's rate of pay in lieu of mechanic's rate as received from July 12, 1946, and continuing during the period that contractors were engaged in performing Bridge and Building work on the Beardstown Division.

JOINT STATEMENT OF FACTS: Subsequent to July 12, 1946, employes of outside contracting companies made repairs and alterations to buildings and structures located on the Beardstown Division as follows:

Chapin, Illinois—General repairs to depot, rebuilding of station platforms and outside toilets.

Christopher, Illinois—General repairs to passenger station.

Centralia, Illinois—General repairs to coal chute and rebuilding of Blacksmith shop.

During the period the employes of the contractor performed this work, J. P. Myatt and J. L. Pate were employed and paid as B&B mechanics.

Agreement between the parties effective June 1, 1938, is by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: As stated in Joint Statement of Facts, subsequent to July 12, 1946, employes of outside contracting companies made general repairs to the depot at Chapin, Illinois, including the rebuilding of station platforms and outside toilets. This contract was let to Contractor Hugh Gibson.

Subsequent to July 12, 1946, employes of outside contracting companies made general repairs to the passenger station at Christopher, Illinois. This contract was let to Contractor M. L. Easley.

Subsequent to July 12, 1946, employes of outside contracting companies made general repairs to the coal chute and for the rebuilding of the blacksmith shop at Centralia, Illinois. The contract for the work at the black-

While Award 2971 sustains the claim of a section foreman for the difference in rate of pay currently allowed and that which allegedly would have been paid had certain work not been contracted, the Carrier in that instance failed to introduce any evidence having probative value to support its action in contracting the service made the basis of dispute.

In conclusion the Carrier avers:

(1) The decision to contract this work was conceived in good faith by the Carrier in an effort, under most distressing circumstances, to maintain its facilities in such a manner that its obligation under the terms of the Interstate Commerce Act would be fulfilled. See Section I (6) of said Act, which reads:

"Part I, INTERSTATE COMMERCE ACT

Sec. 1 (6) It is hereby made the duty of all common carriers subject to the provisions of this part to establish * * * the facilities for transportation, the carrying of personal, sample, and excess baggage and all other matters relating to or connected with the receiving, handling, transporting, storing, and delivery of property subject to the provisions of this part which may be necessary or proper to secure the safe and prompt receipt, handling, transportation and delivery of property subject to the provisions of this part upon just and reasonable terms, and every unjust and unreasonable classification, regulation, and practice is prohibited and declared to be unlawful."

(2) The Carrier has proved that a sufficient number of employes could not be recruited to maintain three B&B gangs. This claim is premised upon the establishment of two additional gangs. This was a physical impossibility.

(3) It being impossible to establish two additional B&B gangs, the service made a basis of controversy, if not contracted, could not have been performed.

(4) It is a settled principle of law that in order to collect damages because of an alleged breach of contract there must be proof of damage. In this case no such proof has been presented as the record demonstrates by a preponderance of evidence that the claimants would not and could not have been made foremen of mythical gangs without employes to supervise.

(5) In the light of the record, a sustaining award would be unwarranted, untenable, inequitable and in total disregard of the evidence presented by the parties.

(Exhibits not reproduced.)

OPINION OF BOARD: This Docket presents another controversy between the same parties as Docket No. MW-3932 on which we have this day rendered Award No. 3823.

This Docket presents the claim that the Carrier violated the Agreement by contracting certain Bridge and Building work on the Beardstown Division in 1946 and that two mechanics should be paid the difference between what they received as mechanics and what they should have received as foremen during the period the work was being done by contractors.

The factual situation here is essentially the same as that considered on Claims 1 and 2 in Award No. 3823. For the same reasons there assigned we must also hold here that the Carrier violated the Agreement but that it was not shown that the two Claimants were adversely affected.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived hearing thereon;

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 Carrier violated the Agreement as claimed. Neither of the two Claimants was adversely affected as claimed.

AWARD

Claim 1 sustained. Claim 2 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. JOHNSON
Secretary

Dated at Chicago, Illinois, this 22nd day of March, 1948.