

Award No. 4753

Docket No. MW-4658

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Charles S. Connell, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

THE DELAWARE AND HUDSON RAILROAD CORPORATION

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

(1) That the Carrier violated the effective Agreement by contracting to the Combustion Engineering Company certain steel erection work that was done in connection with the installation of a boiler at Oneonta, New York, on August 12, 13, 14, 15 and 18, 1947;

(2) That the senior Steel Foreman and the three senior Steel Bridgemen on the seniority district be paid their regular rate of pay for the same amount of time required by the contractor's employees to handle and erect steel used in connection with the installation of the boiler referred to in part (1) of this claim;

(3) That the Mason Foreman and his crew who were assisting the employees of the contractor in the erection of this steel on August 13, 1947 be paid the difference between their regular rate of pay and the rate applicable to the positions of Steel Foreman and Steel Bridgeman.

EMPLOYEES' STATEMENT OF FACTS: Commencing on or about August 12, 1947, the Delaware & Hudson Railroad Corporation employed the Combustion Engineering Company by contract to install a new boiler at Power House, Oneonta, New York.

Steel workers employed by the contractor performed the necessary work connected with the erection of the steel framework for the setting of this boiler. These steel workers performed such work on August 12, 13, 14, 15 and 18, 1947.

On August 13, 1947 these steel workers employed by the contractor were unable to make use of the Lorain Crane (supplied by the Car Department) in setting all the steel beams. For this reason, the members of the B&B Mason Crew were called upon to assist in the setting of certain of these steel beams by means of blocks and falls.

The Employees have contended that these members of the B&B Mason Crew were on August 13th working as steel bridgemen and should have been so paid under the provisions of the Composite Service Rule 18.

Also, the Employees have contended that the steel workers employed by the contractor were performing work which should have been assigned to members of the B&B Steel Bridge Crew.

a derrick, these employees were working in the immediate vicinity and the work they did was only in the nature of laboring work. They are not qualified to perform steel men's work and did not perform any of such work. They were paid their regular rates of pay as Masons in accordance with Rule 18 which provides that employees assigned to a lower rated position will not have their rates reduced.

It is the Carrier's position that it was proper to contract the installation of this boiler, first—because such procedure was necessary in order to get the benefit of certain guarantees, and second—because the nature of the work in connection with the installation was of a nature not customarily or regularly performed by the Carrier's employees and required skill not possessed by Carrier's employees.

(Exhibits not reproduced).

OPINION OF BOARD: The facts are not at variance and this dispute involves the installation of a boiler by an outside contractor at Oneonta, New York, with performance guarantees and other guarantees to comply with state and municipal laws, furnished by contractor. The work of dismantling the old boiler, remodeling of the building, and replacing brick on the outside of new boiler was performed by claimant employees. Also, all piping connected with the boiler installation, and the installation of automatic controls under the direct supervision of the contractor, was done by said employees.

The contested work is limited to the steel framing supports. The claimants state that these steel framing supports were necessary to prepare the building, and the Carrier states the involved steel framing supports to be a part of the boiler installation, separate from the building, but not separate from the boiler. The installation is described in the record as follows: "The boiler is erected inside a steel frame which forms the support for the boiler and stoker and ties the three drums and other parts of the boiler together. Inside the steel frame, the boiler is enclosed in brick work. The steel frame is not separate but is a part of the boiler. A boiler of this type could not be built without the steel frame to tie it together."

It is apparent from the facts before us that the steel framing to support the boiler and tie its component parts together was an integral part of the boiler, and part of the contract job of installation of the boiler. Former awards of this Board dealing with disputes in analogous situations where work is performed by outside contractors, have held that claims which allege that certain portions of such contract work come within the Maintenance of Way Scope Rule were not valid. In Award No. 2819 we stated, "Manifestly, a determination as to whether contracted work comes within the scope of the Agreement must be resolved from a consideration of the character of work as a whole, and not by breaking it down into all of its component parts. * * * It would be difficult, indeed, to conceive of any proper subject of an independent contract that would not embrace some elements of work which, standing alone, would come within the purview of the Scope Rule." There is no claim here that contracting to install the boiler was a violation of the Agreement and since we have ruled that the steel frame support was a part of the boiler, and its installation, it follows that claims (1) and (2) will be denied.

Claim (3) relates to the work on one day of the mason crew in helping the contractor in the erection of steel, and requests that they be paid the difference between their regular pay, which they received for such work, and the rate applicable to the position of steel foreman and steel bridgeman. The work which the mason performed was to hoist part of the steel with block and tackle. On the day in question, the derrick normally used was obstructed by some pipes, and the mason gang used its block and tackle under the direction of the contractor to hoist the steel. They did not engage in the setting of any of the steel. Rule 18 is controlling in this claim and it reads as follows:

"Rule 18. Employees assigned to higher rated positions shall receive the higher rate while so engaged; if assigned to a lower rated position their rate will not be changed."

The Employees state that the work performed by the mason crew was not masons' work, and we agree with that contention. They further contend that the work was that of a steel crew, and at the bridgeman's rate of pay. The record does not show that these men did any riveting or welding, but only helped lift steel by block and tackle. In our opinion, the work performed could at most be classed as helper's work, and since that rate is below the rate of pay for masons, to pay them at mason's rate was in accordance with Rule 18 and did not constitute a violation of the Agreement. Claim (3) will, 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 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 did not violate the Agreement.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 14th day of March, 1950.