

Award No. 4945
Docket No. MW-4857

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Edward F. Carter, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
CENTRAL OF GEORGIA RAILWAY COMPANY**

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

(1) That the Carrier violated the Agreement by assigning to contractors the work of painting and repairing the Ocean Steamship Terminal Building;

(2) That all employes holding seniority as Painters and Carpenters on this seniority district who were adversely affected by being cut-off and unemployed; or who were working in lower classes because of force reduction be paid at their respective rates a number of hours equal to the number worked by the employes of the contractor in the performance of this work referred to.

EMPLOYES' STATEMENT OF FACTS: During February, 1949, the Carrier assigned or permitted the employes of outside contractors, not holding seniority in the Maintenance of Way Department, to perform Bridge and Building work on the Ocean Steamship Company's property at Savannah, Georgia, which is leased by the Central of Georgia Railway Company. The work which was performed by the contractor's forces included work heretofore and subsequently performed by the Carrier's own Bridge and Building forces and involved painting and carpenter work.

The employes of the contractors who performed this disputed work consumed approximately 800 man hours in performing the carpenter work, and approximately 400 hours in performing the painting work.

The Agreement, effective February 1, 1942, and subsequent amendments and interpretations are by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: As stated in the employes' Statement of Facts, an outside contractor was engaged to perform Maintenance of Way work on property leased by the Carrier during February, 1949.

Rule 1 of the effective Agreement reads as follows:

"Rule 1. SCOPE. These rules govern the hours of service, working conditions and rates of pay of employes in the Maintenance of Way and Structure Department, except:

This work involved removing two tracks inside the shed, flooring over the area occupied by the tracks with a timber platform and setting back and repairing the west wall of the shed, with incidental changes in wiring and plumbing.

A contract was made by the Steamship Company with the Clifton Erection Company for cutting off certain trusses, setting back the wall of the shed, repairing the siding, doors and windows, removing an overhead walkway and making necessary repairs and blocking up the old wharf drops, the total for this contract amounting to \$48,099.77.

In connection with this improvement the Railway was requested by the Steamship Company to remove two tracks from the shed, floor over the area occupied by these tracks, and make the incidental alterations to the lighting and plumbing, which work was performed by the Railway's forces under the usual terms for performing work for outside parties, and the entire cost of this work was paid for by the Steamship Company.

When these improvements and repairs were completed the southbound shed was leased to the Railway under a lease agreement dated May 26, 1948, subject to termination by either party upon thirty days' notice. Copy of lease is attached marked Exhibit "J".

In addition to the monthly rental named in the lease the Railway agreed "to pay from time to time as they mature 30% of all taxes and fire insurance premiums, maintenance of improvements on the leased premises to present condition and 50% of the cost of dredging the slip".

This clause in the lease agreement places no obligation on the Steamship Company to have the work of maintaining the leased premises performed by the Railway's forces and the Steamship Company may at the discretion of its operating officials have such repairs made by independent outside contractors and charge the Railway with the cost of the work on request the Railway to perform such work with its own forces.

Other portions of the Ocean Steamship Terminals are currently under lease to other tenants and whose relations with the Steamship Company, as landlord, are similar to the relations of the Railway with the Steamship Company in the lease of the space in the office building, in that the Steamship Company has assumed the responsibility of maintaining the leased space at its expense.

It is the Carrier's contention that the Brotherhood of Maintenance of Way Employees are in error in presenting this claim to be the Third Division of the National Railroad Adjustment Board as there has been no violation of their contract because the work claimed is on property owned by the Ocean Steamship Company of Savannah with which company the Brotherhood of Maintenance of Way Employees have no contractual relation. The claim should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: This is a claim for work lost when the fitting and repairing of a part of one floor of a building to be used by the Carrier was sublet to independent contractors.

The record shows that early in 1949, the Carrier determined that it needed additional office space. It entered into negotiations with the Ocean Steamship Company for the leasing of space in the Ocean Steamship Terminal Building. A written lease was entered into on May 16, 1949, for the use of approximately 6235 square feet of floor space at the agreed rental price of \$1,500 per annum. The lease provided that the Ocean Steamship Company should pay all taxes, fire insurance premiums, and maintain the building at its own expense. There

was a further provision that the Carrier would pay the cost of alterations, painting, or interior decorations requested of the Ocean Steamship Company by the Carrier during the term of the lease.

Before entering into the lease, the Carrier required the Ocean Steamship Company to make certain repairs and alterations which it agreed to do as a condition precedent to the making of the lease. Pursuant to this arrangement, the Ocean Steamship Company in early 1949, contracted with several contractors for the performance of the work. The work was completed before the lease was entered into and consequently prior to the time that the Carrier had any actual interest in the property.

The Organization contends, however, that a practice had existed for many years by which employes of this Carrier were used to perform maintenance and repair work on the property of the Ocean Steamship Company. The facts are that on or about July 1, 1932, the Carrier leased certain real property from the Ocean Steamship Company upon which were located buildings, sheds, docks, and other railroad facilities. The lease of July 1, 1932 provided that the Carrier would maintain the property described in the lease. The Carrier having contracted to maintain the property, we think the maintenance would constitute work within the Maintenance of Way agreement. But in the case before us, the lease provided that the Ocean Steamship Company would make the repairs and alterations which afford the basis of this dispute. This is a right upon which a property owner may insist unless he contracts to the contrary. The owner has not done so in this case.

It appears that the Ocean Steamship Company has on occasion contracted with the Carrier for the performance of maintenance work on its property and the maintenance of way employes have performed the work. It is shown by the record that Carrier was paid by the Ocean Steamship Company for the work done. This can give maintenance of way employes no right to the work afforded by the Ocean Steamship Company under such an agreement. The Carrier under such circumstances is an independent contractor by which it agrees to perform work for the Ocean Steamship Company. The right of the maintenance of way employes of the Carrier to perform it, is wholly dependent upon the nature of the contract between the Carrier and the Ocean Steamship Company.

It is urged that the rule is different where the contracting parties have the peculiar relationship that exists between the Carrier and the Ocean Steamship Company. The record shows that the Carrier owns all the capital stock of the Ocean Steamship Company and that many corporate officers of one hold administrative offices in the other. Operational officers are not so set up. That each corporation is a separate entity is not successfully disputed in this record. The property of each is separate and distinct. The fact that the capital stock of one might be owned by the other in no manner gives the one any property rights in the other.

The scope rule of the Maintenance of Way Agreement provides that employes within that Agreement shall perform all such work that the Carrier has available. The maintenance work of the Ocean Steamship Company is available to the employes of the Carrier only to the extent that the agreement between the Carrier and the Ocean Steamship Company provides. The lease of the floor space in the Ocean Terminal Building reserves that work to the owner, Ocean Steamship Co. Necessarily the Carrier, or its employes, have no right to perform it.

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 the Agreement was not violated.

Claim denied

AWARD

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 21st day of July, 1950.