

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

A. Langley Coffey, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
CHICAGO AND NORTHWESTERN RAILWAY COMPANY**

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

(1) That the Carrier violated the effective Agreement, when on or about December 1, 1948, they assigned to the employes of Young and Greenwalt, General Contractors, the work of placing metal culverts south and east of Fremont, Nebraska.

(2) That the B&B Department employes who are customarily assigned to perform work of a similar nature, and who hold seniority rights on the district where this work was performed, be paid their proportionate share of the total number of hours consumed by the Contractor's employes in performing this work.

JOINT STATEMENT OF FACTS: On or about December 1, 1948, employes of Young and Greenwalt, drainage contractors, were assigned to place two tunnel liner plate culverts, each 54 inches in diameter by 96 feet in length, beneath the Carrier's tracks at Bridges S-95.5 and S-95.6. These bridges are located south and east of Fremont, Nebraska.

The culverts were placed in the embankment at new locations to replace 24 inch cast iron culvert pipes which were previously buried and abandoned and not removed after the new culverts were completed. The metal culverts, which were installed by the contractor's employes, consisted of metal rings 20 inches wide, each ring being cut into three sections. The culverts were placed beneath the embankment by excavating and tunneling, the excavating being done on the outer sides of the embankment, the tunneling being done directly beneath the center portion of the embankment.

After excavating or tunneling for approximately 2 feet, these additional sections to provide a 20 inch ring were bolted in place and this procedure repeated until the entire culverts were in place. The excavated material was removed through the installed pipe.

• The agreement, dated January 1, 1947, between the two parties to this dispute, and subsequent amendments and interpretations are by reference made a part of this Statement of Facts.

POSITION OF EMPLOYEES: During the handling of this claim on the Carrier's property, the Director of Personnel, Mr. G. F. Stephens, addressed the following letter to the General Chairman, under date of June 4, 1949.

to have the work of installing the new pipe culverts at Bridges S-95.5 and S-95.6 taken care of as quickly as possible.

It is the position of the carrier that for the following reasons the claim herein involved is not justified and should be denied:

The installation of the new pipe culverts was new construction work of a specialized character and of a hazardous nature, and the carrier's bridge and building employes were not equipped nor sufficiently experienced to adequately and safely handle the special type of work involved.

The new construction work performed by the contractor was not a type of work that had been recognized as belonging to employes of the railway company, but was construction work of a nature that had always been previously let to contractors without a contention by the employes or their representatives that the contracting of such work was in violation of the provisions of maintenance of way schedule rules agreement.

Even though the carrier conceded that the work in question belonged to its bridge and building employes (which it does not), the fact remains that the carrier was unable to secure the services of a sufficient number of men to increase its bridge and building force to the extent that such force could handle such work and also adequately keep up with the necessary maintenance work requirements.

All of the bridge and building employes involved were worked full time during the period the work was being performed by the contractor, and they were not deprived of employment due to the work having been let to a contractor.

(Exhibits not reproduced.)

OPINION OF BOARD: This dispute falls in the general category of contract cases. The facts are agreed on and are recited in the joint submission above stated. Those facts, by reference, are made a part of this opinion.

As an abstract principle, a Carrier may not let out to others the performance of work of a type embraced within one of its agreements and, where exceptions to the scope of the agreement are claimed, other than those expressly mentioned, any other limitation upon the agreement must be established by definite proof. See Award 757.

On the facts at issue, the Board finds that the Carrier has failed to establish by definite proof in this case that the work in question is excepted from the scope of the agreement.

Contentions of the Carrier have failed to hold up under the close scrutiny of the Board and must fall one by one under the weight of the agreement, Board precedent, and the facts of the case. For controlling authority compare Award 5090 and awards cited therein.

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

The Carrier violated the Agreement.

AWARD

Claim (1 and 2) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 13th day of December, 1950.