

Award No. 5471

Docket No. MW-5524

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CHICAGO AND NORTH WESTERN RAILWAY COMPANY

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

(1) That the Carrier violated the effective agreement about October 25, 1949, when they assigned the Vogel Construction Company to repair a concrete and brick masonry wall in the rear of stall No. 18, Monona Yard Enginehouse, Madison, Wisconsin.

(2) That B&B employes holding seniority on the territory where the work was performed, be paid at their straight time rate of pay for an equal proportionate share of the hours consumed by the contractor's forces in performing this work.

EMPLOYES' STATEMENT OF FACTS: On or about September 24, 1949, the rear wall of Stall 18, Monona Yard Enginehouse, Madison, Wisconsin, was damaged by the uncontrolled movement of a locomotive.

The Carrier assigned the work of repairing the damaged wall to the Vogel Construction Company, General Contractors.

The work of repairing the damaged wall was started by the Contractor on or about October 25, 1949 and the job was completed on or about November 25, 1949.

The Employes of Vogel Construction Company hold no seniority rights in the Carrier's Bridge and Building Department.

Claim was filed with the Carrier on November 30, 1949, in behalf of the Bridge and Building employes, and claim was declined.

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

POSITION OF EMPLOYES: The Preamble of the effective agreement reads as follows:

"The following agreement will govern hours of service and working conditions of employes of the Chicago and North Western Railway Company enumerated in the scope rule, and will supersede all previous agreements and rulings thereon in conflict herewith."

their organization representatives that it was their contention the letting of the work to a contractor was contrary to the provisions of the maintenance of way schedule agreement and that a claim was to be submitted as a result of contracting the work.

It is the position of the carrier that in the circumstances involved its action in contracting the work in question was proper and not contrary to the provisions of schedule rules or agreements with the maintenance of way organization; that on basis of the evidence the claim of the employees is not warranted and should therefore be denied.

OPINION OF BOARD: On September 24, 1949, the rear wall of a stall in the enginehouse at Monona Yard, Madison, Wisconsin, was damaged by a locomotive. The work of repairing the damaged wall was contracted to the Vogel Construction Company. The Organization contends that the work belongs to them and that the contract was violated when it was farmed out. The Carrier contends that it did not have B. & B. employees capable of doing this work. The Carrier made no attempt to increase its forces. Neither did it negotiate with the Organization in an attempt to work the matter out before contracting it. We do not think the record sustains the contention of the Carrier that it did not have B. & B. employees who were capable of doing this repair work. It was a small repair job which the Organization asserts involved about 112 man hours. It seems almost incredible that a large carrier would not have employees who could do this type of repair work. The case is controlled by Award 5470, released herewith.

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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 21st day of September, 1951.