

Award No. 5563
Docket No. MW-5328

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Alex Elson, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

SOUTHERN RAILWAY COMPANY

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

(1) The Carrier violated the agreement when they assigned the Brice Building Company, Inc., Birmingham, Alabama, to perform work in connection with the construction and repair of the Carrier's buildings at John Sevier, Tennessee;

(2) The Bridge and Building employees holding seniority on the territory where this work was performed, be paid at their respective straight time rates of pay for an equal proportionate share of the hours consumed by the contractor's forces in the performance of the above referred to work.

EMPLOYEES' STATEMENT OF FACTS: Prior to June 10, 1949, the Carrier contracted to the Brice Construction Company, Birmingham, Alabama, the remodeling of a part of its present roundhouse at John Sevier, Tennessee.

This remodeling job involved the following:

- (1) The removing of old floors and replacement with new concrete floors.
- (2) Depressing floors in six engine pits and extending these pits approximately 27 feet.
- (3) Construction of a three stall drop pit.
- (4) Construction of three concrete run-ways.
- (5) Construction of steel and wood elevated platforms.
- (6) Painting of the interior of the building.

The General Contractor assigned to perform the above listed work, was not covered by the scope of the effective agreement. The Carrier's Bridge and Building forces have performed similar work in the past.

Under date of June 10, 1949, claim was filed with the Carrier on behalf of the employees. Carrier denied the claim contending that work involved, was not covered by the scope of the Maintenance of Way Agreement and that there was no evidence that claimants were adversely affected.

to realize that they, as well as their employers are engaged in a highly competitive business, and that the more expensive they make railroad operations the less work there will be for them and other railroad workers to perform.

(Exhibits not reproduced.)

OPINION OF BOARD: On March 31, 1949, the carrier entered into an agreement with the Brice Building Company, Inc., general contractor, Birmingham, Alabama. The contract, among other things, was to furnish all labor, equipment, tools, approved mechanical and other appliances for the proper prosecution of the work, and certain materials to construct new facilities for the use in servicing and repairing diesel-electric locomotives at John Sevier, Tennessee.

The work done by the contractor included the construction of a new steel reinforced concrete drop pit; and addition 24' wide by 160' long to the existing building constructed of concrete, brick, steel, corrugated wire glass, cement roof tiles, and built up tar and gravel roofing; reconstruction and lengthening by 27' six steel reinforced concrete inspection pits; construction of new concrete floors in 6 stalls, depressing floors 2' by 9", construction of floor in new addition to building; construction of 7 elevated platforms of steel and wood; remodeling of a stall for use as a cleaning room; construction of 3 outside concrete access ramps, wiring and equipping with new lighting and electrical fixtures various parts of facilities constructed by contractor; installation of 20 new 36" aluminum fan ventilators, installation of floor and pit drains, roof drainage, catch basins and plumbing fixtures; installation of corrugated wire glass in monitor of 8 stalls; application of prime coat and two finish coats of paint to all exposed new woodwork, painting of structural steel and miscellaneous iron; and installation of heating system.

The contractor started the work on January 3, 1949, and completed it on September 7, 1949.

A claim was filed by the organization on the property on June 10, 1949, on behalf of the foreman and 16 men in the bridge and building gang. The claim was for the following:

1. Extending six concrete inspection pits 27 feet.
2. Laying new concrete floor in six stalls.
3. Constructing three outside concrete access ramps.
4. Constructing elevated platforms of steel and wood.
5. Painting entire interior of building.
6. Laying new concrete floor in building.

The claim which is filed before this Board extends to "work in connection with the construction and repair of buildings at John Sevier, Tennessee". The claim also has been enlarged to include all bridge and building employees holding seniority in the territory where this work was performed.

In response to the carriers' original submission, the organization modified the claim which was filed with this Board and limited its claim to the items which were originally protested when the claim was first filed on the property. The organization explains the variation between the claim on the property and the claim filed with the Board on the basis that when the claim was filed on the property, the work had not been completed. However, the carrier points out that as late as April 6, 1950, the general chairman in handling the claim on appeal with the personnel officer limited the claim to the items included in the first claim filed on the property.

In any event, since the organization states that it is limiting its claim to the specific items referred to in its original submission, little purpose is served by discussing whether or not the claim is properly before the Board. We will for the purposes of this case, treat the claim before us as limited to the items included in the claim filed on the property.

The principles applicable to this dispute are well settled by numerous awards of this Board.

First, as a general rule the carrier may not contract out work covered by its collective bargaining agreements.

Second, work may be contracted out when special skills, equipment or materials are required, or when the work is unusual or novel in character or involves a considerable undertaking. (See Awards 757, 2338, 2465, 3206, 4712, 4776, 5028, 5151 and 5304.)

Third, the work contracted out is to be considered as a whole and may not be subdivided for the purposes of determining whether some of it could be performed by the employees of the carrier. (See Awards 3206, 4776, 4954 and 5304.)

Fourth, the burden of proof is on the carrier to show by factual evidence that its decision to contract out work is justified under the circumstances. (See Awards 2338, 4671 and 5304.)

Applying the above principles, we are of the opinion that the claim must be denied. The record shows that the bulk of the work performed by the contractor was that of new construction. The project was one of major proportions involving the construction of additional special facilities and buildings to make possible the handling of dieselized equipment. While there is some evidence in the record that Maintenance of Way Employees have in the past on occasion done new construction work, some of which was similar to that involved in this dispute, the bulk of the work done by the contractor was not of a character usually performed by Maintenance of Way Employees. Over the years the carrier has contracted out new construction work such as that involved in this dispute where special machines, materials, equipment and skills were required.

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 19th day of November, 1951.