

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John W. Yeager, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

CHICAGO AND NORTH WESTERN RAILWAY COMPANY

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

(1) That the Carrier violated the effective agreement when they assigned general contractors to construct a brick addition to the power house at Antigo, Wisconsin, and to construct an extension to the yard office at Antigo, Wisconsin, during the year 1949;

(2) That Bridge & Building Department employees Dale L. Young, Raymond Koeller, Edward K. White, Charles W. Paulson, Carl Ledin and Martin G. Bauman, and other Bridge & Building employees customarily assigned to perform similar work on the Ashland Division, be paid at their respective straight time rates of pay for an equal amount of the manhours consumed by the contractors' forces in the performance of the above referred to work.

EMPLOYEES' STATEMENT OF FACTS: During the year 1949, a General Contractor was assigned to build a 24' x 51' brick addition to the power house at Antigo, Wisconsin.

Approximately 4,000 manhours were consumed by the Contractor's employees assigned to this project. The addition is 10' in height from the floor to ceiling and has a 5 ply tar and gravel roof. The foundation and floor is constructed of concrete. There is no basement beneath the addition.

During the year 1949, a General Contractor was assigned to build a 16' x 34' frame addition to the yard office at Antigo, Wisconsin and to make repairs to the old portion of the building.

Approximately 1,500 manhours were consumed by the contractor's employees assigned to this project.

The addition is 9' 5" in height from the floor to ceiling and is covered with a roll roof. The foundation and floor is constructed of concrete. There is no basement beneath the addition.

The repair work performed on the old portion of the building consisted of partitioning off a space 8' 4" x ", which is used to house heating facilities. Other partitions were changed to provide suitable space for sanitary facilities. The interior of the new addition is sheeted with 4' x 8' pieces of sheet rock.

connection with the performance of new construction work the attention of the Board is referred to its Awards 4158 and 4159 covering disputes between the parties here involved account contracting of work and in which awards the Board denied claims of the employees for compensation account contractors performing new construction work similar to work here involved.

It is the position of the Carrier that it is the duty of this Board to interpret rules as contained in the agreement between the Carrier and the Brotherhood but that the Board is not authorized under provisions of the Railway Labor Act to establish new rules or conditions of employment.

It is the further position of the Carrier that the claim of the employees is not supported by the rules agreement between the Carrier and the Brotherhood; that therefore the Board not having authority to sustain the claim of the employees cannot consistently or properly do otherwise than deny such claim.

If the Board holds it does have jurisdiction in this case, it is the desire of the Carrier that an oral hearing be held before the Board in order that the Carrier may, if deemed necessary, submit further argument in support of its position.

The facts and data used herein in support of the Carrier's position have heretofore been made known to the authorized representatives of the employees and made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: The claim here is that the carrier in violation of the controlling agreement let a contract for the construction of a brick addition to the power house and for the construction of an extension to the yard office both at Antigo, Wisconsin, and thus deprived the Bridge and Building employees covered by the Agreement with the Brotherhood of Maintenance of Way to work to which they were entitled. The Brotherhood claim on behalf of certain named employees their straight time rates of pay for an equal amount of man-hours consumed by the contractor's forces in the performance of the work.

The power house addition was of brick, 24x51 feet, 10 feet high from floor to ceiling without basement with a 5 ply tar and gravel roof, and with concrete floor and foundation. The yard office extension involved the construction of a frame addition 16x34 feet, and repairs to the old portion of the building.

The record indicates sufficiently that all work involved in the two projects could have been performed by the Bridge and Building employees with the possible exception of certain heating, plumbing and electrical work. The organization concedes that there was electrical work performed which did not belong to the employees under the agreement.

The only material difference between the controlling facts here and those in Award 5470 is that here electrical work was involved whereas there it appears not to have been. There, as here, the installation of heating and plumbing was involved.

These conditions are not considered sufficient to deprive the Bridge and Building employees of their right to perform the work belonging to them under the Agreement. It is a matter of common knowledge that in the building contracting field it is a common practice for the different classes of work to be performed by different crafts or classes. There is nothing in the record here suggesting a valid reason why that common practice should not have been allowed to prevail with regard to the construction work here involved.

The reasoning contained in Award 5470 is adopted as controlling herein. Accordingly it must be said that the Carrier violated the Agreement when it let this work of the Bridge and Building employes for performance under a contract. The claimants, therefore, are entitled to be compensated on the basis of work which belonged to them under the Agreement. However, for such work, if any, as was performed under the contract but which did not belong to the employes under the Agreement, they are not entitled to be compensated.

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 Carrier violated the Agreement.

AWARD

Claim sustained as per Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 30th day of June, 1952.