

Award No. 5880
Docket No. MW-5716

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

John W. Yeager, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
THE DELAWARE AND HUDSON RAILROAD CORPORATION

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

(1) That the Carrier violated the provisions of the effective agreement by assigning or permitting employes of C. Rolland Oswald, General Contractor to perform work necessary in connection with the construction of a new Car Department Building at Glenville, N. Y., during the period November, 1948 to April, 1949, inclusive.

(2) That the Senior Mason Foreman, Masons and Mason Helpers; the Senior Carpenter Foreman, Carpenters and Carpenter Helpers, and the Senior Plumbers and Plumber Helpers employed on the Susquehanna Division be compensated at their respective straight time rates of pay for a proportionate share of the total number of hours consumed by the General Contractor's employes in constructing this building.

EMPLOYEES' STATEMENT OF FACTS: During the period from November 1948, to April 1949, the Carrier assigned or permitted employes of the C. Rolland Oswald Construction Company, general contractors, to construct a small Car Department building at Glenville, N. Y. This project required the services of various crafts such as Mason Foreman, Masons and Mason Helpers; Carpenter Foreman, Carpenters and Carpenter Helpers, and Plumbers and Plumber Helpers.

Employes holding seniority in each of the aforementioned classes are employed by the Carrier in the Maintenance of Way Department and these employes have been assigned to identical or similar projects in the past.

On February 5, 1949, certain of the Carrier's Masons and Carpenter Helpers were furloughed by reason of force reduction.

A claim was filed in behalf of certain Bridge and Building Department employes on the Susquehanna Division for compensation at their respective straight time rate of pay for an equal proportionate share of the total number of hours consumed by the General Contractor's employes in constructing the building.

Claim was declined.

Carrier records indicate that all employes of the crafts involved were regularly employed from October 25, 1948, the date that work was begun, until five (5) employes (helpers) in our carpenter force were furloughed in force reduction effective February 5, 1949, which date was beyond the expected completion date of the building. Had there been no difficulty in getting our own employes to do the work, the building would have been completed before the contractor began construction on October 25, 1948.

The Carrier wishes to emphasize the fact that following its decision to erect this building, plans and specification costs were prepared estimated on the use of Carrier employes; and, to carry out the program the aid of the Organization was solicited to the extent of advising them of our requirements and their help being needed to hire additional men. The necessary positions required to erect the building were advertised for in the customary manner that all work is protected. The bulletins were available for all interested employes to avail themselves of the opportunity of working on this building. There was no applicant for the Mason Foreman's position and two employes, an insufficient number, were the only other applicants. The Carrier could not begin the erection of such a large building with only one mason and one carpenter, when the program required nine (9) employes, including other crafts. The Organization did nothing in response to Carrier's request that it help produce replacements of the employes that were to bid in the positions advertised for. Therefore, after a wait of six (6) months, most of which was caused by not having enough employes of our own to do the work, the Carrier was forced to contract the work. It had been expected that the building would be completed long before the contract was let, had our own employes desired the work.

It is the position of the Carrier that it exerted every effort to have this work done by its own employes, not only because it is the intention of Management to do all work possible by its employes, but there also was the fact that work done by an outside concern would cost more than our original estimate. The ultimate cost bore out this understanding. This is a wholly unwarranted claim and the Board is respectfully asked to deny same.

The Management affirmatively states that all matters referred to in the foregoing have been discussed with the Committee and made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: This is a claim by the Organization on behalf of unnamed employes that the Carrier had a building constructed under a contract thus depriving employes of work which belonged to them under the Agreement. The claim is for compensation on behalf of the employes for a proportionate share of the total number of hours worked by the employes of the Contractor at the straight time rate.

The building was constructed by a Contractor and Bridge and Building employes performed none of the work. The Carrier recognized this as work proper to be performed by Bridge and Building employes and made an effort to have it performed by them. The effort was unsuccessful whereupon it caused it to be let under contract. The details of the effort concerning which there is no material dispute offered in the respective presentations. Nine positions which were necessary for the performance of the work were bulletined, but there were only three bids. Negotiations were carried on with the accredited representatives of the Organization the purpose of which was to try to provide employes from the Organization to perform the work. These were ineffective.

There was a lack of housing accommodations at the point where the work was to be done and it appears that this may have been the reason for the failure of bids. To meet this situation the Organization suggested (1) the placing of a camp outfit at the location, (2) detaching employes from

their gang and reimbursing them for expenses while working on the job, or (3) transporting employees to and from the job daily by truck.

These suggestions were not accepted by the Carrier. Whether or not their feasibility was examined by the Carrier does not appear. Likewise information as to whether or not Bridge and Building employees could have been obtained to perform the work under either of these suggested plans has not been made known. There is no evidence of bad faith on either side with reference to the matter.

It appears to be one of these situations where the Carrier exhausted its reasonable efforts to have the work done by the Organization to no avail, and after having done so let the work to a Contractor. Under the decisions of the Division this may not be regarded as a violation of the Agreement.

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

The claim has not been sustained

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

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

Dated at Chicago, Illinois, this 23rd day of July, 1952.