

Award No. 6200

Docket No. MW-6123

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Thomas C. Begley, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
SEABOARD AIR LINE RAILROAD COMPANY**

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

- (1) That the Carrier violated the agreement when it contracted for the construction of an addition to the wash house and for the paving of the wheel storage yard at West Jacksonville, Florida, to the Elliott Building Company;
- (2) That all employees holding seniority on the Carpenter Gangs on the North Florida Division be allowed pay at the applicable straight time rate of pay for an equal proportionate share of the total man-hours consumed by the employees of the Elliott Building Company while engaged in the work referred to in part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The Carrier contracted with the Elliott Building Company, General Contractors, Hickory, North Carolina, for the construction of an addition to a washroom at West Jacksonville, Florida, and for the paving of the wheel storage yard at the same location. Work was started on or about April 12, 1951.

On April 26, 1951, General Chairman E. C. Wear, advised the Carrier's Chief Engineer by Western Union Wire, as follows:

"JACKSONVILLE, FLA. APRIL 26, 1951.

**MR. W. D. SIMPSON, CHIEF ENGINEER
SEABOARD AIR LINE RAILROAD, NORFOLK, Va.**

**ASSIGNMENT OF CONSTRUCTING ADDITION TO WASH
ROOM AND PAVING WHEEL STORAGE YARD WEST JACK-
SONVILLE SHOP TO OUTSIDE CONTRACTOR IS VIOLATION
CURRENT AGREEMENT AND CLAIM BEING MADE IN BEHALF
OF CERTAIN MAINTENANCE OF WAY FORCES. PROJECT
BEGAN ABOUT APRIL 12 AND STILL IN PROGRESS. DETAILS
WILL FOLLOW.**

E. C. WEAR, GENERAL CHAIRMAN"

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not hire such work to be done by other than Maintenance of Way employees. Obviously, such a conclusion is absurd. It would require the Carrier to use only Maintenance of Way employees to build a huge new bridge, an elaborate station or large buildings and numerous other kinds of large Capital improvements. No reasonable people would contract with such a result in mind for it is clear that for such large construction work the Carrier would not have the supply of men of different skills required nor the special equipment."

In subsequent discussions the Organization representatives stated they felt the Carrier should confer with them on each project and reach an understanding as to whether it should be contracted or performed by MW&S forces, and we were informed that this arrangement was in effect on one of our neighboring lines. It was very clear that what the Organization wanted was the right to tell the Carrier what work it could and could not contract. As this would be taking over a managerial prerogative, disregarding the contract provisions and the past practices on the property in contracting projects (something that was never contemplated by the working agreement), the Carrier declined this proposal. This feature is covered in Third Division Award 5044, penultimate paragraph of Opinion; also in fourth paragraphs of Opinions in Third Division Award 5331, and Fourth Division Award 733.

It is clear that failing to secure a new rule on the property the Organization has embarked upon a campaign of filing claims with the Third Division involving the contracting of work in the hope that it will secure sustaining Awards which, in effect, would give them a new rule. This is, of course, not a function of the Board, as explained in Third Division Awards 4585, 4259, 5517, 5597 and others.

The claim of the Organization, which was initially filed with Division Engineer in behalf of employees of Carpenter Gangs under certain named foremen, changed in appeal to Superintendent to cover employees of all Carpenter Gangs on the North Florida Division, and changed in filing with the Third Division to include all employees holding seniority on the Carpenter Gangs on the North Florida Division, is now very unusual in that it would include both employees working on all Carpenter Gangs and those who are off on leave of absence. There are several such men in military service who retain their seniority. Carrier does not see how these men could have any claim for any work on the property because they certainly could not be classed as being available for work. None of the other unnamed claimants on the North Florida Division were adversely affected on account of the project being contracted. They were all fully and regularly employed on MW&S work during the period March 1951-October 1951, inclusive. In addition to full employment of such regular building or carpenter forces, including the regularly assigned gang at West Jacksonville, an extra carpenter gang was put on at West Jacksonville on February 5, 1951 (which is still employed) to take care of additional maintenance work that arose in connection with the new shop facilities.

As pointed out by Carrier there has been no violation of the agreement with the Organization, there is no merit to the claim and Carrier respectfully requests that it be denied.

Carrier affirmatively states that all data contained herein has been made known to or discussed with representatives of the Organization.

(Exhibits not reproduced.)

OPINION OF BOARD: The Carrier contracted to farm out certain work claimed by the employees to the Elliott Building Company, at its West Jacksonville, Florida, shop. The docket is in conflict as to when the work started. However, it started sometime in March or April of 1951, and was finished in October, 1951.

The Employees claim that part of the work performed falls within their Agreement; namely, the construction of an addition to a washroom, and the paving of the wheel storage yard.

For the reasons set forth in the opinion of Award 6199, even though the work involved is somewhat different, the same principles are applicable. Here again we cannot find sufficient facts to warrant a conclusion that the Carrier has sustained the burden of establishing any exceptions to the general rule, that Rule which holds that the Carrier may not contract out work, the performance of which is of a type embraced within an agreement with its employees.

The claim as to monetary loss will be sustained in so far as it relates to the total man-hours consumed by the employees of the Elliott Building Company, while engaged in the work referred to as outlined in this opinion which should have been performed by Carrier's maintenance of way employees.

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 Carrier violated the Agreement.

AWARD

Claim sustained in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 30th day of April, 1953.

DISSENT TO DOCKET MW-6123, AWARD 6200

For the reasons expressed in dissent to Award 6199, we likewise dissent to this award.

/s/ C. P. Dugan

/s/ J. E. Kemp

/s/ W. H. Castle

/s/ R. M. Butler

/s/ E. T. Horsley