

Award No. 6424

Docket No. MW-6522

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Emmett Ferguson, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
ILLINOIS CENTRAL RAILROAD COMPANY**

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

(1) That the Carrier violated the agreement when it assigned alteration, repair and painting work on its freight house at Decatur, Illinois, to a contractor, whose employes hold no seniority under the effective agreement;

(2) That Bridge and Building Foreman E. W. Waytenick and Bridge and Building Carpenters Fred McGaughey, Frank Burns, M. W. Green, C. R. Simmons and H. E. Bennett be allowed pay at their respective straight-time rates for an equal proportionate share of the total man-hours consumed by the contractor's forces in performing the alteration and repair work referred to in Part (1) of this claim;

(3) That Painter Foremen Cleo McConnell and Painters Ernie Isaac, W. E. Watson, V. M. Roberts, F. W. Welton, B. McDonald and W. B. Underwood be allowed pay at their respective straight time rates for an equal proportionate share of the total man-hours consumed by the contractor's forces in performing the painting work referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The Carrier owns and maintains a freight station building on Carrier-owned right-of-way at Decatur, Illinois, which the Carrier decided to remodel to the extent that the space which was being used as a ware-room would be converted into a new and appropriate freight-office.

The work involved remodeling work only, such as creating new window and door openings, sealing other existing openings, and the lining of existing brick walls with plaster, together with all desired furring, painting and insulation work. In addition thereto, a new asphalt tile floor covering was applied directly on top of the existing concrete floor.

The Carrier's forces have heretofore performed similar work using tools and equipment owned either by the Carrier or by the craftsmen employed in the Carrier's respective Bridge and Building and/or Paint Departments.

agreement, under the provisions of Rule 26 of the agreement the Organization is precluded from asserting that any violation of the agreement existed more than sixty days prior to December 17, 1951.

All data in support of carrier's position have been submitted to the employees and made a part of this dispute.

OPINION OF BOARD: In this docket we are required to apply the governing rules and precedent awards, to the factual situation existing at the Decatur, Illinois freight house of the Carrier, when in 1951, an alteration was done by outside contract, which the Maintenance of Way employees now claim to have been their work.

Rules 1, 2, 26 (a) and (b), rate sheets, a labor treaty, and very many awards have been cited to the Board. Stripped of all collateral issues our principal question is: was the work done a major alteration which the claimants were not qualified to do?

The Brotherhood would minimize the work done and the Carrier would detail the facts into a larger project. We are in some doubt concerning the size of the job, the length of time necessary to complete it, the fineness of the finished product, and the cost of the work.

We must draw our conclusions from the facts shown in the docket. Accordingly we believe that actually this is a border line case. There is agreement on one fact at least. A ware-room, presumably rough finished, was converted into offices by relining the area, together with new floors, wiring, plumbing and heating.

Undoubtedly some of the details of the job were within the skills of the claiming employees but other requirements such as the plastering and plumbing were beyond their abilities.

Both the Carrier and the Organization cite Award 2819 (Shake) as follows:

"Manifestly, a determination as to whether contracted work comes within the scope of the Agreement must be resolved from a consideration of the character of work as a whole, and not by breaking it down into all of its component parts. In other words, a carrier may not be precluded from contracting a project for which it does not possess and may not be reasonably expected to acquire the necessary skilled help and equipment merely because some isolated and incidental part of the work contemplated, if disassociated from the whole, would come within the scope of the Agreement. It would be difficult, indeed, to conceive of any proper subject of an independent contract that would not embrace some elements of work which, standing alone, would come within the purview of the Scope Rule."

The record before us discloses that there had been a previous conflict at Decatur in 1950 wherein a strike was threatened by the local building trades group because an attempt was made to use company electricians while a contracted job was in progress. It is commonly known that building trades will not work with others outside their group. We are unable to say whether the particular work here present, was susceptible of division so that the rough work could be assigned to the B&B workers and the finish work could have been held back till a later day to be done by the more skilled crafts of plumbers, plasterers, etc. In any event we should not substitute our judgment for that of management. We can only determine whether the Carrier's management was warranted in reaching the decision to contract the work.

We hold that the Carrier was so warranted in the present instance, while remembering that we have already declared this to have been a border-line case.

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 was warranted under the instant facts in contracting the work outside.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummons
Secretary

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