Award No. 6499
Docket No. MW-6443

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

SOUTHERN RAILWAY COMPANY

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

(1) That the Carrier violated the effective agreement when they contracted with C. Y. Thomason Company for the construction of a combination freight and passenger station at Greenwood, South Carolina;

(2) That the Bridge and Building employes holding seniority on the Columbia Division, be paid at their respective straight time rates of pay for any equal proportionate share of the total man hours consumed by the contractor's employes, in performing the work referred to in Part (1) of this claim.

Note: Electrical, plumbing and heating work and other work covered by agreement between the Carrier and its employes of other crafts is excepted.

EMPLOYES' STATEMENT OF FACTS: The Carrier owned and maintained a freight and passenger station in the downtown section of Greenwood, South Carolina, more commonly referred to as the square.

Because the operation in railroad terminals in the square at Greenwood, South Carolina did not meet with the approval of Civic authorities, they prevailed upon carrier managements to move their operations out of the square.

The switching operations in the square became so unbearable that the Civic authorities offered to reimburse the Southern Railway Company for the cost of constructing a new passenger and freight station out of the square, together with any other reasonable expense incurred in moving their operations, including the razing of the old depots.

The Carrier accepted the offer and contracted with C. Y. Thomason Company of Greenwood, South Carolina to construct the new combination passenger and freight depot, at a cost of approximately $52,000.

The Carrier began moving its operations off the square approximately three years after the C. W. C. depot had been removed from the square, at which time the Southern Railway Company started razing its old depots in the square, bringing to an end operations in connection with the switching of cars in the downtown area. The civic authorities presented a check for

(b) New construction work where the contractor, among other things, furnished all necessary working plant, skilled and unskilled labor, tools, appliances, materials and supplies and constructed for a lump sum contract the new combination freight and passenger depot building is **not** spelled out in the Maintenance of Way Agreements and is, therefore, **not** embraced therein. In fact, work employes are to perform is not identified in any rule of the agreements. Moreover, the agreements specify that they govern the hours of service and working conditions of employes. They, therefore, do **not** apply to "work" but to "employes."

(c) Work of constructing new combination freight and passenger depot buildings is **not** performed day in and day out as an essential part of the work of maintaining or repairing facilities used in the daily operation of the railroad. It constituted an "addition" as distinguished from maintenance or repair work.

(d) Work here claimed not being embraced in the scope of the effective Maintenance of Way Agreements is, in effect, a demand for a new rule, which, under the Railway Labor Act, the Board has no authority to grant; its jurisdiction being limited to deciding disputes between an employe or group of employes and a carrier or carriers "growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions."

(e) The Board has heretofore recognized in previous awards that certain work is excluded from the scope of collective bargaining agreements, even though exception is not expressed therein; also that even though work may be embraced in the scope of a collective bargaining agreement it may be contracted out when special skills, special equipment or special materials are required, or when work is novel or unusual in character, or of great magnitude, or involves a considerable undertaking, or when emergency time requirements exist which present undertaking not contemplated by the agreement and beyond the capacity of the carrier's forces; also that work contracted out is to be considered as a whole and may not be subdivided for the purpose of determining whether some parts of it could be performed by employes of the carrier. But a part of the work of constructing the new depot building at Greenwood is here claimed by the Brotherhood.

(f) Claim being one for compensation for work **not** performed is **not** valid under the specific language of Rules 49 and 40 of the respective agreements.

(g) The Brotherhood is here attempting to cause the carrier to pay or deliver or agree to pay or deliver money in the nature of an exaction for services which were not performed. The penalty here sought cannot be awarded under the effective agreements.

For all reasons given, claim should be denied and carrier respectfully requests that the Board so hold.

All relevant facts and arguments involved in this dispute have heretofore been made known to employe representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: The City of Greenwood proposed to make certain public improvements which necessitated the removal of depots and other facilities of the Carrier. Consequently, the City and the Carrier entered into an agreement on May 29, 1951, whereby the City would pay the full cost of construction of new facilities at a specified location upon the understanding that the Carrier would invite bids from reliable contractors and before acceptance submit same to the City for its approval. After construction of the new facilities they were to be conveyed by deed to the Carrier.

Since this was construtcion work "for account of and at the cost and expense of the City", it did not constitute work of the Carrier and the employes of the Carrier could have no possible claim to its performance.

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 the agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 16th day of February, 1954.