

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

ILLINOIS CENTRAL RAILROAD COMPANY

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

(1) That the Carrier violated the effective agreement when as of July 9, 1951, they assigned a general contractor to construct a water tank at Reevesville, Illinois.

(2) That all Bridge and Building Department employes on the St. Louis Division, be paid at their respective straight time rate of pay for an equal proportionate share of the hours consumed by the contractor's forces in the performance of the above referred to work.

EMPLOYEES' STATEMENT OF FACTS: During the latter part of June, 1951, rumors that the Carrier contemplated contracting with outside parties for the construction of a water tank at Reevesville, Illinois, became more and more prevalent.

Investigation by Employee representatives disclosed that the Carrier had in fact purchased some additional right-of-way on which the water tank was to be erected. Investigation also disclosed that the Carrier's water works employes had been assigned to and had actually started work in connection with the necessary pipe fitting and other water line work which was to connect the new water tank to the existing water lines.

Under date of July 5, 1951, General Chairman Young wrote to the Carrier's Engineer Maintenance of Way, Mr. J. C. Jacobs, as follows:

"July 5, 1951

Mr. J. C. Jacobs,
Engineer Maintenance of Way,
Illinois Central Railroad,
135 E. 11th Place,
Chicago 5, Illinois.

Dear Sir:

Information has reached me that a water tank is to be constructed at Reevesville, Illinois, and it is the understanding that the construction of this water tank is to be contracted by the railroad company to parties not holding any seniority under the Maintenance of Way Structures Department schedule agreement.

to casual laborers employed on the Chicago Terminal to supplement the regular forces account snow and/or ice when employed for 5 or less consecutive days.

"3. In the application of Rule 38, Paragraph (c), the use of an extra gang at a wreck or similar emergency, because regular section gang is not available at the point of wreck or similar emergency, shall not be construed as a violation of the rule.

"In order that the record may be complete, will you kindly indicate in the space provided herein, your acceptance, and return one copy of this letter to me? You may retain a copy for your records.

"Yours truly,

(Signed) C. R. Young,
Manager of Personnel

"ACCEPTED:

(Signed) Frank L. Noakes, General Chairman,
Brotherhood of Maintenance of Way Employees."

In Third Division Award 5487 your Board construed this agreement as follows:

"We must determine the intended meaning of the phrase 'Original construction work usually handled by contractors, for which regular forces are not equipped' appearing in the letter agreement quoted, supra. If the word 'original' was used in the sense of work that was novel, i.e. creatively new, not copied, for which the regular forces are not equipped, i.e., with skills as well as tools and machinery, then after one or more chutes were built by private contractors, support would be given to the Organization's position. But since this agreement was entered into, twenty-five similar chutes had been constructed by outside forces without objection by the Organization. This fact leads us to believe that the parties intended by use of the word 'original' to mean 'new' and it was used to distinguish new work from maintenance and reconstruction."

It is clear that the building of this water tank was "new" construction as distinguished from maintenance and reconstruction in Award 5487. See also Third Division Awards 757, 2338, 2465, 3206, 3254, 3255, 3839, 4584, 4776, 4783, 4887, 4945, 4954, 5028, 5151, 5152, 5304, 5563, 5747, 5839, 5840 and 5880.

It is the position of the Carrier that the work here involved is specifically excluded in the scope rule of agreement with the Brotherhood of Maintenance of Way Employees and to hold otherwise would be to alter the rule, which is beyond the authority of your Board. It is work of a type which by agreement of April 21, 1938, is not within the scope of the agreement, and it has been voluntarily relinquished by the Brotherhood of Maintenance of Way Employees to the Building and Construction Trades Department in their agreement of May 21, 1943. For these reasons this claim is entirely devoid of merit and should be denied.

All data in this submission have been presented to the Employees and made a part of the question in dispute.

(Exhibits not reproduced.)

OPINION OF THE BOARD: Our Award No. 6422 involved the same parties, the same agreement, the same contractors and such a similar factual situation, based upon almost identical evidence, that we think the decision here must be governed thereby.

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 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 31st day of March, 1954.