

Award No. 6930
Docket No. MW-6958

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

LeRoy A. Rader, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
NORTHERN PACIFIC RAILWAY COMPANY

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

(1) The Carrier violated the Agreement when it assigned the work of constructing Bridge 1.4 at Spokane to an outside contractor whose employees held no seniority under the effective Agreement;

(2) The Bridge and Building employees who hold seniority on the Idaho Division 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 work referred to in Part (1) of this claim.

EMPLOYEES STATEMENT OF FACTS: In connection with a proposed change in the curvature of a portion of the Carrier's tracks west of the Spokane Passenger Station, it was found that Bridge 1.4 over Seventh Avenue would have to be relocated, necessitating the West End of the Bridge to be moved in a northerly direction for approximately twenty-five (25) feet at the West End and for approximately forty-five (45) feet at the East End.

Because the existing Bridge 1.4 was a pile and timber construction and because its relocation would seriously interfere with the Carrier's train movements, the Carrier concluded that it would be economically sound and advantageous to construct a new steel-bridge with a concrete slab deck at the point where bridge was to be relocated, since such construction would provide a heavier and stronger bridge and one which would better serve the heavier traffic and the anticipated future requirements at this point. In addition, construction of the new bridge would require only the north half of the two track pile and timber bridge to be removed and taken out of service, thus permitting one track thereon to remain in service without the necessity of totally disrupting train service during relocation work on the bridge such as would be involved if the existing bridge was moved in its entirety to the new location.

Without benefit of Agreement between Management and the General Chairman, the work of constructing the new bridge was let to a contractor and performed by contractor's forces, none of which held any seniority rights under the effective Agreement. This bridge which was constructed by contract

1. That Bridge 1.4 was constructed on a line change;
2. That construction of structures or facilities on a line change is not by agreement, custom and practice the exclusive work of Bridge and Building Department employees;
3. That the construction of steel bridges is not the exclusive work of Bridge and Building Department employees;
4. That the construction of Bridge 1.4 required the employment of men with special skills not possessed by Bridge and Building Department employees;
5. That the construction of Bridge 1.4 by a contractor was not in contravention with the rules of the Maintenance of Way Agreement effective April 1, 1952.

This claim should be denied in its entirety.

All data in support of the Carrier's position in connection with this claim has been presented to the duly authorized representative of the Employees and is made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim comes to this Board by reason of Carrier's action in assigning the construction of Bridge 1.4 to an outside contractor. Bridge and building employees, holding seniority on the Idaho Division claim this work.

The question presented for our consideration is, was this a line change? In order to make this change, an easement was obtained from the owner of a parcel of land contiguous to the new line of railroad. A new roadbed was graded, and new ties and rail were laid for 1999 feet. The grading, placing of new ties, laying of new rail and dismantling of the old bridge was done by Maintenance of Way employees. The new bridge was built by a firm of private contractors.

A letter agreement was entered into on July 25, 1922, which reads in part:

"In accordance with your statement in conference July 24th that in the event suitable rules can be arranged in lieu of Rules 63 and 64 of the Schedule for Maintenance of Way Employees, effective March 1, 1922, you will waive the application for a contract rule, and that any rule, decision or order covering the contracting of work made effective by the United States Railroad Labor Board will not apply to the Northern Pacific Railway, and that it is agreeable to your organization for the railway company to continue in the future, as it has in the past, in the handling of maintenance of way work."

The basic Agreement was subsequently revised on April 1, 1936 and August 1, 1943. It was later contended that Carrier had violated the Agreement by contracting certain bridge repair work to outsiders and the aforementioned revisions superseded the Letter Agreement of July 25, 1922 referred to above. Awards 3254 and 3255 answered that contention in denial awards, stating in part:

"Under such circumstances, we are obliged to say that the Organization is estopped by its subsequent conduct from denying the letter agreement of July 25, 1922, as a valid and subsisting part of the current Agreement."

Therefore, in the new Agreement of April 1, 1952, we are constrained to say the Letter Agreement of July 25, 1922 is still in full force and effect. In the negotiations prior to the current Agreement proposed rules were suggested but were not accepted. In lieu of the Letter Agreement of July 25, 1922, the parties, however, negotiated Letter Agreement of January 31, 1952, providing in part:

"The following is agreed to with respect to the contracting of construction, maintenance or repair work, or dismantling work customarily performed by employees in the Maintenance of Way Department.

"Employees included within the scope of the agreement effective April 1, 1952 * * * perform work in the Bridge and Building Subdepartment and in the Track Subdepartment * * * in connection with the construction and maintenance or repairs of, * * * dismantling of, tracks, structures or facilities located on the right-of-way * * *.

"By agreement * * * particular work in connection with the construction and maintenance or repair of, or in connection with the dismantling of, tracks, structures or facilities * * *, as described in the preceding paragraph which is customarily performed by employees described therein, may be let to contractors and be performed by contractors' forces, provided that when special skills, special equipment or special material are required, or when work is such that the Railway Company is not adequately equipped to handle the work, or when emergency time requirements exist which present undertakings not contemplated by the Agreement and beyond the capacities of the Carrier's forces, should the General Chairman not agree to contracting such work the Railway Company may, nevertheless, let such work to contractors and the dispute may be processed as a grievance or claim."

Apparently this Letter Agreement relates to work customarily performed by the Maintenance of Way Department and we do not believe it extended the Scope of the Agreement.

Also see letter of February 11, 1952 to the effect that the practice concerning performance of work was not changed by the Agreement effective April 1, 1952, which apparently places the burden of proof on Employees to show that these letter agreements were violated in the instant case.

We think that the work here involved was performed on a line change and therefore does not come within the Scope of the Agreement, and are not in agreement with Petitioners' contention that the work was a relatively small change made in the curvature of existing track. Here Carrier acquired a new right of way, made a new fill, laid new ties and rails and built a new bridge containing nearly 500 tons of steel, built 1999 feet of new railroad which was separate and apart from the existing line, which must be construed to place this work in a different category than the ordinary alignment such as done by Maintenance of Way Employees.

Therefore, we conclude, that on the record here, there was no violation of rules.

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 Agreement was not violated.

AWARD

Claims denied 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 29th day of March, 1955.