

Award No. 7060

Docket No. MW-6789

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

SPOKANE, PORTLAND AND SEATTLE RAILWAY COMPANY

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

(1) The Carrier violated the effective agreement when it assigned the work of constructing a rip track shed and/or shelter at Vancouver, Washington, to the Soule Steel Company during the period from October 22, 1951 to December 11, 1951;

(2) All employees holding seniority in the Bridge and Building subdepartment during the period herein involved, 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: On October 30, 1950, the parties to the instant Agreement agreed to a revision of Rule 40 of the Agreement of June 1, 1947, said revision to become effective on November 1, 1950. Rule 40, as revised, provides in part that all work in connection with building construction on the Carrier's operating property will be assigned to and performed by the Carrier's Bridge and Building employees who are covered by the Agreement between the parties hereto, unless, by mutual agreement between the General Chairman and designated representative of Management, it is agreed that certain projects may be contracted to outside forces.

The Carrier sought and secured General Chairman Germain's approval to have certain work in connection with the construction of the rip track shed contracted to outside forces, namely the installation of a roof water drainage system; water supply system; and oxygen, acetylene, and compressed air lines.

However, the construction and erection of the structural framework of the building, together with the application of one coat of paint, was assigned to outside forces without any attempt to secure the approval of General Chairman F. H. Germain.

The Claimants are all Bridge and Building employees as referred to in Rule 40 of the effective Agreement, and the rip track shed was constructed on the Carrier's operating property.

attention is directed to Carrier's Exhibits No. 3 and 5. The Employee Representative endeavored to secure the number of hours worked by contractor forces and he was unable to do so.

It is the position of the Carrier that the type of work herein involved is not subject to the Scope Rule of the current Agreement and even if a sustaining award were to be made, it is not possible to determine what payment, if any, should be made to employees of the Carrier's B&B Department.

Attached herewith and made a part hereof are Carrier's Exhibits Nos. 1 to 10, inclusive, which cover the pertinent correspondence between the Carrier and the employees with respect to this dispute.

All data in support of Carrier's Position have been submitted to the Organization and made a part of this particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: In 1951, Carrier constructed a new rip track shelter shed at its general shops at Vancouver, Washington. The concrete foundations were constructed by Carrier's B&B forces. The construction of the shelter shed was contracted to the Soule Steel Company. The Organization contends that the work belonged to the employees of the B&B subdepartment and reparations are demanded for such work except that which was contracted by agreement with the Organization. The claim is based on Rule 40 as amended on October 30, 1950, the applicable part of which states:

"All work on Operating property, as classified in this Agreement, shall be performed by employees covered by this Agreement, unless by mutual agreement between the General Chairman and designated Representative of Management, it is agreed that certain jobs may be contracted to outside parties account inability of the railroad due to lack of equipment, qualified forces or other reasons to perform such work with its own forces."

The shelter shed consisted of two 50 foot adjacent spans, one being 870 feet and the other 613 feet in length. The structure was covered with corrugated aluminum roofing. A drainage system to take care of roof water was constructed with a series of catch basins and pumps. Twelve underground water hydrants and five drinking fountains were evenly distributed within the area. Forty-six oxygen and acetylene welding stations were provided and forty-six compressed air stations were installed. Eleven electric welding plugs were provided.

The drainage downspouts, soil pipe, the oxygen, acetylene and air lines, and the water and disposal lines were all contracted out in accordance with an agreement made with the Organization. The construction of the shelter shed was contracted out without any such understanding and without any attempt being made to secure an agreement with the Organization's General Chairman. It is for this work only that reparations are sought.

It is the position of the Carrier that it contemplated a structure in place which was prefabricated at the Soule Steel Company plant. It contends that special skills and equipment were required and for this reason Carrier could properly contract the work. We point out, however, that under the controlling rule in the present Agreement, Carrier was required to give the work to its own employees unless an agreement with the General Chairman is obtained permitting the contracting of the work "due to lack of equipment, qualified forces or other reasons." No attempt was made to secure such an agreement and the controlling rule was therefore violated. Awards 3215, 6199. We do not intend to imply that the General Chairman could arbitrarily refuse to permit the contracting of work in a proper case. We do state that the failure to negotiate with the General Chairman precludes any contention under the rule before us that the Carrier could properly proceed

to farm out the work. The rule provision is clear and unambiguous. The Carrier cannot be excused from complying with its plain provisions. See Awards 4920, 4921.

The Carrier asserts that the scope rule does not and was never intended to cover work when the facility was purchased in place. We cannot agree with this assertion. If such were the interpretation to be placed on the scope rule, the Agreement could be rendered negatory by contracting in place for every building, bridge, culvert, or other installation. No such result was intended. Rule 40 specifically covers the work involved in the claim.

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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 22nd day of July, 1955.