

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Dwyer W. Shugrue, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

UNION PACIFIC RAILROAD COMPANY

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

(1) The Carrier violated the effective Agreement when it assigned the construction of a coal bin at The Dalles Timber Treating Plant to the Baxco Corporation whose employees hold no seniority rights under this Agreement;

(2) B. & B. Foreman C. F. Nearman; B. & B. Carpenters A. W. Toney, C. A. Elkinton; B. & B. Helpers C. M. Dregne and E. A. Hill each be allowed pay for an equal proportionate share of the total man-hours consumed by the Baxco Corporation's employees in performing the work referred to in part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The Carrier owns a Timber Treating Plant at The Dalles, Oregon, which it leases to the Baxco Corporation.

Under the provisions of the lease, the Baxco Corporation is obligated to perform the maintenance work necessary to the operation of the plant and facilities, except for major repairs and new construction.

In 1953, the work of constructing a new coal bin, ten feet in width by forty-five feet in length out of secondhand 8" x 16" bridge stringer supplied by the Carrier was assigned to and performed by Baxco Corporation employees who hold no seniority rights under this Agreement. The Baxco Corporation's employees consumed one hundred twenty (120) man-hours in the performance of the above referred to work.

The Carrier's bridge and building employees have heretofore performed work of a similar nature and character at this Timber Treating Plant. The employees holding seniority in the Bridge and Building Department were available, fully qualified and could have efficiently and expediently performed all the work described herein.

The Agreement violation was protested and the instant claim was filed in behalf of the Claimants. The claim was declined as well as all subsequent appeals.

A section along the north side of the coal trestle had been boarded up for a number of years and this section formed a part of the southerly side of the relocated coal bin. The easterly side was left entirely open so that coal could be wheeled from this bin into the power plant in emergencies. Thus, the coal bin, as it was re-erected, had only one end, no floor and no foundation other than blocking. As a result of this relocation and reconstruction, the Organization filed the instant claim asserting that the construction of the coal bin was "assigned" by the Carrier to Baxco.

The Carrier did not assign any such construction. The coal bin, in question, was an existing structure which was re-located and re-constructed by Baxco with its own employes and equipment, at its own expense, for its own purposes and does not become a part of the plant owned by the Carrier. The Carrier had nothing, whatsoever, to do with its re-location or re-construction. The handling of this claim is indicated by Carrier's Exhibits A through F.

POSITION OF CARRIER: This is simply a case of an industrial company using their own employes to re-locate and re-construct a small structure, without foundation, on their own leased property for their own use in connection with their own operations. It was not constructed on the property of the Carrier used for railroad operations, but rather on property leased to an independent company and devoted entirely to industrial purposes, which operations were under the exclusive control and supervision of that independent industrial company. Its "construction" was not "assigned" by the Carrier, and did not in any way inure to its benefit. It was for the sole use of Baxco and its own employes, and did not in any way involve the railroad operations of this Carrier.

The scope of the Maintenance of Way Employes' contract with this Carrier only embraces such work as is connected with the functions of the Carrier's operations as a common carrier. It does not confer upon them the exclusive right to perform work on property leased by the Carrier to an independent industrial company, and which does not concern railroad operations.

The Claimants herein were not deprived of any work to which they were entitled under their Agreement.

The Board is requested to deny the claim.

All information and data contained in this Response to Notice of Ex Parte Submission are a matter of record or are known by the Organization.

(Exhibits not Reproduced.)

OPINION OF BOARD: The instant docket together with Award 7444 and Award 7442, contemporaneously rendered, were considered together and all three disputes concern construction of certain facilities at the timber treating plant at The Dalles, the only difference being the individual structures involved and the method of handling their construction. The claim indicated the nature of the facility constructed. The parties are agreed that the same principles and issues are involved in all three dockets, i.e., was the carrier in violation of the Agreement because employes other than those within the coverage of the agreement performed the construction work in dispute. This docket must be governed by our reasons for holding in Award 7442, that the agreement was not violated.

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: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of November, 1956.