Award No. 7712
Docket No. MW-7448

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

HOUSTON BELT & TERMINAL RAILWAY COMPANY

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

1. The Carrier violated the Agreement when it assigned certain work in connection with the construction of a shed at the Universal Carloading Company to a contractor whose employes hold no seniority under the effective Agreement;

2. B&B Foreman Fritz Caswell and B&B Carpenters J. E. Heath, O. H. Walston, J. D. Tyboroski, Ben Pawloski, R. C. Rodriguez, J. F. Barkley; and B&B Carpenter Helper L. H. Dickey each 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.

EMPLOYES' STATEMENT OF FACTS: In 1953, the Carrier constructed a loading platform shed, 20' x 146.6', located within the right-of-way lines, adjacent to the Universal Carloading Company at Commerce Street in Houston, Texas.

The work of constructing the foundations for the aforementioned loading platform shed, applying floor decking, and other work incidental thereto, was assigned to and performed by the Carrier's Bridge and Building forces.

On January 29, 30, and 31, 1953, and on February 1 and 2, 1953, the work of assembling the prefabricated steel framework and applying the roofing thereto was assigned to and performed by a contractor whose employes hold no seniority rights under this Agreement. Two hundred and eight man hours were consumed by the contractor's forces in the performance of the above referred to work.

By letter Agreement, dated April 25, 1952, construction work within the right-of-way lines is specifically reserved to the Carrier's Maintenance of Way forces and prohibits the Carrier from any deviation therefrom without first handling with the Brotherhood's General Chairman.

The Carrier assigned the aforementioned work to a contractor without first handling with or obtaining the approval of the General Chairman.

The claim has been handled on the property in the usual and customary manner without effecting a mutually satisfactory adjustment.

(Exhibits not reproduced.)

OPINION OF BOARD: The confronting claim is made in behalf of named Claimants for reparations in the equivalent of 208 man hours, straight time rate, account of the alleged improper contracting out of certain work with the resultant performance of such work by individuals not covered by the Agreement, in contravention of the Scope rule of the effective Agreement, and a Letter of Agreement dated April 25, 1952 each of which provide:

"Rule 1. These rules govern the hours of service and working conditions of all employes, in the Maintenance of Way department, not including supervisory forces above the rank of foreman."

and:

"HOUSTON BELT & TERMINAL RAILWAY COMPANY

Union Station Building

Houston, Texas

April 25, 1952

Mr. C. L. Lambert
General Chairman
Brotherhood of Maintenance of Way Employes
717 Missouri Insurance Building
St. Louis 1, Missouri.

Dear Sir:

Our conference today.

In disposition of the claim of Section Foreman W. R. Wyscarver, wherein time was claimed for July 12, 13, 14, August 28, 1951, for the installation of a turn-out to serve the Harry Lumber Company, near Irvington Boulevard, Houston, it was agreed that Section Foreman Wyscarver and his six (6) men would be paid one day, eight hours each, at the rate of time-and-one-half for Saturday, July 14, 1951, thereby disposing of this entire claim.

It is further agreed that all construction and maintenance belongs to the Maintenance of Way forces within the right-of-way line, which is considered 50 feet from the center of the track, and it is also agreed and understood that the right of way lines are not established until the tracks have been constructed.

It is understood that any deviation from this agreement will be handled with the General Chairman in the event the Houston Belt and Terminal forces are not available to perform the necessary construction or maintenance work.

Yours very truly,

/s/ G. M. Leach
General Manager

ACCEPTED:

/s/ C. L. Lambert
General Chairman—MofWE

/s/ L. V. Foster
Secretary-Treasurer—MofWE

/s/ S. M. Kaster
Actg. Asst. General Chairman—MofWE"

* * * * *

The construction project in question consisted of an L shaped covered platform. All work in connection with this facility was done by employes cov-

ered by the Agreement except the assembly and installation of prefabricated steel work for the roof and the application of asbestos roofing sheets. This work was "contracted out" by the Respondents and forms the basis of the Organization's complaint.

The Organization asserts that the Scope rule while covering this type of work and reserving the same to those covered by the Agreement, the parties here have, by virtue of the above quoted Letter of Agreement, specifically agreed that all construction work belongs to the Maintenance of Way forces, particularly where as here, such work was within the right-of-way line. It was pointed out that any deviation of this right is possible only when handled with the General Chairman or when forces are not available to perform such work when required, was not here accomplished. It was further pointed out that Claimants were both available and qualified to perform the work in question.

The Respondent countered that the Scope Rule of the effective Agreement could not be properly interpreted as granting to Maintenance of Way forces the exclusive right to perform the construction work that is at issue here. It was further asserted that the Letter of Agreement merely reserved to the employes construction pertaining to track work, and was not intended to cover the installation or erection of steel work or asbestos sheet roofing. It was further averred that the Claimants here were not qualified either by past knowledge or experience to perform the duties in question, and lastly, if such work had been assigned them as here requested they (Respondent) would have been subjected to additional and unnecessary labor costs.

This dispute concerns the propriety of "contracting out" certain construction and the question of whether or not the performance of the work in question, namely the installation of steel girders and sheet asbestos roofing, inures to the employes covered by the effective Agreement. This basic question has been before this Board on a considerable number of occasions, with decisions both affirming and denying requests that such work be found to be Maintenance of Way work. While certain broad principles have been enunciated the overall sense of these awards indicates the intention of this Board to apply these broad principles to the then existent facts of record. The Board, in finding that a Scope rule, similar to, if not identical with the rule here, was ambiguous stated in Award 7216:

> "The question is whether the kind of work performed by the outside contractor belongs exclusively to the maintenance of way employes under the scope rule of their agreement. The scope rule in question is very broad and does not contain any description of the kind of work intended to be covered. This type of question has been before this Board on many occasions and the applicable principles have been stated in numerous awards. In short, where, as here, the scope rule is completely ambiguous as to the kind of work covered, it is interpreted to reserve all work usually and traditionally performed by the class of employes who are parties to the Agreement. There then remains to be decided in each case whether the particular type of work involved has been 'usually and traditionally performed' by the Claimants."

We here reaffirm our adherence to both the premise and reasoning expressed in the above award (7216) and those other awards preceding it.

If we were to apply the above reasoning to the present facts we would of necessity conclude that the erection or installation of the steel work and sheet asbestos roofing in question was not the type of work which had been usually and traditionally performed by Maintenance of Way employees. But here we have a mutually executed Letter of Agreement which the Organization insists placed construction work under the Maintenance of Way Agreement, thereby guaranteeing its (the work) performance to and by employes covered by such agreement to the exclusion of all others.

Here again we are confronted with an ambiguous instrument. That this is true is evidenced by the parties' failure to agree on its proper meaning and application. If we adopt the Respondents' reasoning the above Letter of Agreement we would find that only track construction work within the right-of-way line was covered. If we adopt the Organization's reasoning we would conclude and find that all construction of any kind or character, without exception, had been given to the Maintenance of Way forces.

It is fundamental that all portions of an instrument must be considered and the relation of all provisions, each to the other, be examined to determine the intent of the parties. The first paragraph of the Letter concerns the disposition and payment of a claim for contracting certain work that was obviously and clearly track work. The second paragraph of the Letter, contrary to the Organization's contention pertains and alludes to the type of work that was the subject of the controversy. If this were not true there would be no reason for its inclusion in the Agreement. If a broader application had been intended the parties could and would have so noted. That the phrase—all construction and maintenance—cannot be interpreted as being "all inclusive" can be best demonstrated by the illustration that:

> If the Respondent were to build a multi-storied office building would the construction thereof inure to the maintenance of way forces?

We think not. A rule of reasonableness must be applied to determine the parties intent.

We think that this conclusion is further buttressed by the past interpretation and application of the Letter of Agreement by both parties, when steel trusses covered by galvanized iron were utilized by the Carrier to "roof in" an extension to one of its facilities, with such work being done by other than Maintenance of Way forces.

This work was done subsequent to the execution of the aforementioned Letter of Agreement. The Organization registered no protest. There are no valid grounds for protest here.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 25th day of February, 1957.