

Award No. 7861

Docket No. MW-7447

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Dwyer W. Shugrue, Referee

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**

**ST. LOUIS SOUTHWESTERN 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 Diesel Shop building at Pine Bluff, Arkansas, to a General Contractor whose employees hold no seniority rights under this Agreement;

(2) The employees holding seniority as Carpenters on the seniority district where the work was performed 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.

**EMPLOYEE'S STATEMENT OF FACTS:** Because of the increased use of diesel locomotives, the Carrier's diesel shop facilities at Pine Bluff, Arkansas, became inadequate for the servicing and repairing of diesel locomotives.

Beginning in 1952, the Carrier dismantled its old diesel shop building at the aforementioned location and constructed a new prefabricated steel diesel shop building, approximately 60 feet in width by 240 feet in length, on the same site.

The Carrier utilized its employees to perform the work of dismantling the old diesel shop building and in constructing the concrete foundations for the new building, as well as for the work of constructing the concrete runways and inspection pits; welding and riveting the prefabricated steel building frame together; in exterior and interior painting; in the installation of the required steam, water, air, oil, and fuel transmission lines; and in the rearrangement of the tracks leading into the building.

The work of erecting the prefabricated steel frame work and applying the corrugated asbestos roof and siding thereto was assigned to and performed by a General contractor whose employees hold no seniority rights under this agreement. 960 man-hours were consumed by the contractors forces in the performance of the above referred to work.

This contract was let without benefit of conference with an approval and/or knowledge of the employees authorized representatives.

necessary force to have performed the work with its own employees. It is shown also that the claimants were not adversely affected and that there is no basis for the payment claimed.

The Employees are endeavoring to secure a new rule in the guise of an interpretation. The Carrier respectfully submits that the claim is entirely without merit and should be denied.

All data herein has been presented to the Employees in correspondence or in conference.

(Exhibits not reproduced.)

**OPINION OF BOARD:** This claim, by the Petitioner's carpenters, arises by reason of Carrier's contracting out, commencing in 1951 and finishing in July 1952, the construction of a new Diesel Shop building at Pine Bluff, Arkansas, without prior negotiation. There is no dispute that employees within the coverage of the Agreement performed all the preliminary work incident to the construction of the building itself, such as construction of concrete foundations, runways and inspection pits and also exterior and interior painting, installation of steam, water, air, oil and fuel transmission lines.

The only item involved in this dispute is the use of and time consumed by the contractor's forces in erecting the prefabricated steel frame-work, amounting to 117 tons of structural steel, and applying corrugated asbestos roofing and siding. The building was either 60' x 240' or 68' x 169' with a side extension of 68' x 33' and 44' in height to the peak of the roof depending on whether we accept the Employees' or Carrier's version. The Employees estimate 960 man-hours consumed, less than Carrier contends, in its erection and the Carrier submits that the construction cost for the building was \$53,472.40.

The Employees contend that the Carrier cannot, without violating the Agreement, arrange for or permit the construction of a building on its property and for its use by other than employees within the coverage of and holding seniority under the Agreement, with one exception. The exception being after conference with and approval by authorized representatives of the employees under the Agreement.

The Carrier maintains that the work involved new construction and therefore was not covered by the Agreement; that even if covered, the claimants did not have the necessary skills nor did it have the necessary equipment and that it could not have secured the necessary force to have performed the work with its own employees.

The Employees rely primarily on the Scope Rule and also cite the classification rule, the pertinent parts of which read as follows:

**"Rule 1**

**Scope**

"These rules will govern the hours of service, working conditions, and rates of pay of all employees in the Maintenance of Way Department as listed in the agreement, and other employees who fill similar positions hereafter established in the Maintenance of Way Department account changes in maintenance work."

**"Rule 2**

**Seniority**

"2-3. LIMITS.—For the purposes of this Agreement, the Maintenance of Way Craft or Class shall be divided into the following Subdepartments, Subdivisions, and Seniority Districts:

Subdepartments

Subdivisions"

## "Bridge and Building

Pile Driver Foremen  
 Carpenter Foremen  
 Asst. Carpenter Foremen  
 Carpenters No. 1  
 Carpenters No. 2  
 Special Carpenters  
 Bridge Foremen  
 Asst. Bridge Foremen  
 Bridgemen No. 1  
 Bridgemen No. 2  
 Bridge Laborers  
 Painter-Foremen  
 Asst. Painter Foremen  
 Painters No. 1  
 Painters No. 2  
 Tinner Foremen  
 Tinner Helpers  
 Drawtenders"

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## "Roadway Machine

Steam Shovel Engineers  
 Steam Shovel Cranemen  
 Steam Shovel Firemen  
 Dragline Operators  
 Dragline Operator Helpers  
 Caterpillar Grader Operators  
 Caterpillar Grader Operator  
 Helpers  
 Crane Operators

\* \* \*

The Scope Rule here does not set forth any precise job or work classification and does not by its language refer to new construction. Under the controlling doctrine of this Board, we must look to see whether or not work of this particular nature was customarily and traditionally performed by the employes covered under the Agreement. The practices on the property become material in such an instance and provide a guide to the interpretation of the rule as applied by the parties.

Each party cites instances when work of a somewhat similar nature has been performed on the property; the Organization citing those where its employes were used and the Carrier those that had been contracted out. We are also aware that when the almost identical Agreement, effective December 1, 1937, was negotiated, the Employes sought a scope rule which by explicit language would have included the type building involved here. Their position was not negotiated into the present Agreement. Agreeing that that fact alone is not controlling, we believe it to be one of the factors that may be considered by the Board in defining the limitations of this scope rule.

This record will not support a finding that the type of work involved here, erection of prefabricated steel frames, was reserved to the employes covered by the Scope Rule. The facts indicate that management reserved to itself the right to determine when its own forces could perform such a project or to contract out the work. The employes have not sustained, to the degree necessary, the burden of establishing that customarily and traditionally they performed work that was involved here. The preliminary work previously referred to was work customarily and traditionally performed by the employes and that work was properly assigned to them.

**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: A. Ivan Tummon**  
Executive Secretary

Dated at Chicago, Illinois, this 9th day of May, 1957.