

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, 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 agreement when it assigned the construction of an addition to the Yard Office at Albina, Oregon and other work incidental thereto to a contractor whose forces hold no seniority under the effective agreement;

(2) Each member of B&B gangs Nos. 702 and 707 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 all Bridge and Building work (except painting) referred to in part (1) of this claim;

(3) Painter Foreman W. E. Stitt and Painters J. V. May, L. A. Saeger, E. D. Sagerson, and R. E. Meng, each be allowed pay at their respective straight-time rates of pay for an equal proportionate share of the total man-hours consumed by the contractor's forces in performing painting work in the project referred to in part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: The Carrier owns a yard office building located at Albina, Oregon which is used in its business as a common carrier.

During October and November 1953, the work of constructing a 14x30 addition to the aforementioned building and other work incidental thereto was assigned to and performed by a contractor whose employees held no seniority rights under this agreement.

The addition is of wood frame construction, constructed on a concrete foundation, and is partitioned into four office rooms. The floors were covered with rubber tile floor covering, and a concrete walk way, approximately 70 feet in length by 4½ feet in width was constructed around the exterior. The addition was painted. The estimated labor cost, shown on the Union Pacific Work Order, was twenty one hundred dollars.

During the period of construction the Carrier's Bridge and Building Gangs Nos. 707 and 702, with a combined complement of 34 skilled craftsmen, were in the vicinity of Albina, Oregon and were readily available for

This is the type of construction which was usually and ordinarily handled by contractors and generally accepted as proper by the Organization. The letter agreement of November 18, 1943, specifically recognizes the right of the Carrier to continue to contract out such construction. In addition, the letter agreement only curtails the use of contractors to perform other types of construction where the regular Company forces were available and the Carrier possessed the necessary equipment. The regular Company forces were not "available" in this case, since they were needed to perform their other usual and necessary maintenance work during this period. They worked on each and every regular working day and suffered no loss by reason of this construction being performed by contractor's forces.

The performance of this work by a private contractor was in conformity with the previously accepted practice, approved and recognized as proper by the Organization in the letter agreement of November 18, 1943. The claim of alleged contract violation and for additional payments, which would be neither compensatory nor in reparation for any loss, is without foundation. The Carrier respectfully requests that it be denied.

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: Claim is here made in behalf of those employees, who, it is alleged, were adversely affected by the Carrier's act in contracting for the performance of certain construction work. Reparations are sought on the basis of proportionate shares of the man hours consumed in completing the project in question.

The Organization took the position that the erection, and painting of the addition to the building was of the type that was contemplated by the Scope rule of the effective agreement, and as such, to be performed by the employees covered thereby. It was asserted that the work was of a nature that had historically and traditionally been performed by Maintenance of Way forces. It was pointed out that the building's erection did not require the utilization of any equipment that was not readily available, and likewise there were available forces, possessing the necessary skill to complete the project.

The Respondent countered with the assertion that while the Scope Rule of the Agreement did not place all construction work in the Maintenance of Way forces, the parties hereto had, by way of Memorandum of Agreement, dated November 18, 1943, vested in the Carrier the right to "contract out" work to the extent present here. It was further contended that no Maintenance of Way forces were available to perform the work which forms the basis of this dispute; and lastly, that Claimants were here seeking reparations far in excess of the amount expended in completing the project in question.

The Scope Rule of this agreement is a general one; it does not enumerate the work covered thereby. However, we are confronted with a special understanding between the parties which concerns the right of this Carrier to assign construction work to others than those covered by the effective Agreement. This Memorandum of Understanding was entered into on November 18, 1943, and among other things contained the following provisions:

"3. The performance of maintenance work by contractors will be curtailed to the extent employees included within the scope of the agreement effective December 1, 1937, are available to perform such work, and the company has necessary equipment.

"It is understood the company reserves the right to contract projects to the extent that such work was handled by contract during normal conditions."

We are of the opinion that this provision which reserved to the Carrier the right to "contract out" work to the extent that such work was handled by outside forces during normal conditions, granted to the Respondent freedom of action to contract the work in question. This conclusion is based on the fact that the work in question was an addition to a building which was initially constructed by outside forces, and that like initial construction or additions to existing buildings at this location had been "contracted out" under conditions that were there, as here, "normal" within the meaning of such Memorandum of Understanding.

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 Carrier did not violate the effective agreement.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 19th day of December, 1957.