

**Award No. 9602**  
**Docket No. MW-8449**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Carl R. Schedler, Referee**

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**

**SOUTHERN PACIFIC COMPANY (Pacific Lines)**

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

1. The Carrier violated the effective agreement when it assigned Pisano Brothers, General Contractors, whose employes hold no seniority rights under the effective Agreement, to reconstruct Carrier-owned Warehouse No. 108, San Jose, California, in lieu of using Maintenance of Way forces;

2. The Carrier allow each employe of B & B Gang No. 13, pay at their respective straight time rate, for an equal proportionate share of the total man-hours consumed by the Contractor's forces in performing the work referred to in part one (1) of this claim.

**EMPLOYEES' STATEMENT OF FACTS:** The Carrier owns Warehouse No. 108, located on the Carrier's right-of-way at San Jose, California, which building is occupied by San Jose Potato and Onion Distributors and Levy Zetner Brothers. All maintenance and repair work required prior to that involved in the instant dispute, has historically and traditionally been assigned to and performed by Maintenance of Way and Structure Department Employees.

On October 3, 1953, this structure (Warehouse No. 108) was damaged by fire.

On October 9, 1953, the Carrier's Supervisor of Bridges and Buildings, Mr. W. C. Harman, submitted an estimate in the total amount of \$667.00 to repair the damage caused by the fire; the work to be performed by B&B Sub-Department employes.

Under date of December 11, 1953, the following Mailgram was forwarded to B&B Supervisor Harman, from Division Engineer J. E. Wheeler:

"(f) Foremen and assistant foreman of terminal, section, extra gang, yard, construction, work train, gravel pit, quarry and powder gangs, and all employees coming under the supervision of such foremen.

"(g) Crossing watchmen, crossing flagmen, tunnel watchmen, bridge watchmen, miscellaneous watchmen, and lamptenders.

"(h) Track welders, grinder operators, and their helpers.

"(i) Employees in Timber and Tie Treating Plants except stationary engineers and stationary firemen."

That rule, as will be noted, merely names the classes of employees whose rates of pay, hours of service and working conditions are governed by the rules of the current agreement. Obviously this rule contains no provision reserving the work here involved to employees represented by petitioner.

### CONCLUSION

Carrier asserts that it has conclusively established that the claim in this docket is entirely lacking in either merit or agreement support; therefore, requests that said claim, if not dismissed, be denied.

All data herein submitted have been presented to the duly authorized representative of the employees and are made a part of the particular question in dispute. The carrier reserves the right, if and when it is furnished with the submission which has been or will be filed ex parte by the petitioner in this case, to make such further answer as may be necessary in relation to all allegations and claims as may be advanced by the petitioner in such submission, which cannot be forecast by the carrier at this time and have not been answered in this, the carrier's initial submission.

(Exhibits not reproduced.)

**OPINION OF BOARD:** On or about October 3, 1953 Warehouse No. 108 owned by the Carrier and leased to the San Jose Potato and Onion Distributors and to Levy Zetner Brothers was damaged by fire. An estimate that the total cost of repairing the damage would be \$667.00 proved to be reasonably accurate. On December 11, 1953 the Carrier's Division Engineer instructed the B & B Supervisor to proceed with the repair work as soon as he could make labor and material available. After some two months had elapsed and the work had not started the Carrier changed its plans and decided to have the work performed by an outside contractor. The Contractor's employees did the work beginning in April, 1954. The Organization filed a claim on behalf of the B & B gang claiming that under the Agreement the work belonged to them. The Carrier denied the claim stating that such work was not covered by the Agreement and furthermore it had been the practice and custom to have outside contractors perform this type of work. We think this record supports the Carrier's contention.

We are unable to find any provision in the agreement which specifically states that the B & B gang will exclusively have the right to make repairs to a building leased to private operators not connected with the Carrier, or not used by the Carrier in its railroad operations. We subscribe to the Board's doctrine as enunciated in Award No. 4783 where it said:

“ . . . where a Carrier owns property used not in the operation or maintenance of its railroad, but for other and separate purposes, such property is outside the purview of the Agreement.”

The claim is without merit.

**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 there were no violations.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 25th day of October, 1960.