

Award No. 10311

Docket No. MW-8826

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Charles W. Webster, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
READING COMPANY**

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

(1) The Carrier violated the Agreement when it assigned the work of repairing the piers on Bridge No. 91/79 at Webster, Pennsylvania, to a General Contractor whose employees hold no seniority rights under the provisions of this Agreement;

(2) Each Bridge and Building employe on the Division where the work was performed 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: Commencing on or about September 1, 1955 the work of repairing piers on Bridge No. 91/79 at Webster, Pennsylvania was assigned to and performed by a General Contractor, without negotiations with or concurrence of the employees' authorized representatives.

Similar pier repair work has heretofore been assigned to and performed by the Carriers Bridge and Building employes, using equipment either owned or rented by the Carrier.

The employes holding seniority in the Bridge and Building Department were available, consequently the agreement violation was protested and a claim filed in behalf of the claimants.

Claim was declined as well as all subsequent appeals.

The Agreement in effect between the two parties to this dispute dated January 1, 1944, together with supplements, amendments and interpretations thereto are by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES': Rule 1, captioned Scope, reads as follows:

"The rules contained herein shall govern the hours of service, working conditions and rates of pay of the following classes in the Maintenance of Way Department, including those employes at Port Richmond, Port Reading and Reading Frog Shop:

and Mason Helpers on the Shamokin Division seniority roster, and such work has, when deemed necessary, been performed by contractors' forces. Carrier further submits that this practice was not abrogated by agreements subsequently negotiated. Since Carrier's forces were fully employed at the time contractor's forces were working on Bridge No. 91/79, as shown in Carrier's Exhibit C-2, the claim as submitted is for penalty only and Carrier submits that it is a well established principle that penalties cannot be awarded under a contract unless specifically provided for therein.

Under the facts and evidence, Carrier submits that the work such as performed by contract at Bridge No. 91/79 has not in the past been reserved for or performed exclusively by employees holding seniority as Carpenters, Carpenter Helpers, Masons and Mason Helpers on the Shamokin Division seniority roster. Furthermore, Carrier's forces lost no time or earnings by reason thereof and were not adversely affected thereby. For the reasons set forth hereinbefore, the Carrier maintains that the claim as here presented is not supported by the rules of the effective agreement, understandings or past practice, is without merit and requests the Board to so find and deny the claim.

This claim has been discussed in conference and handled by correspondence with representatives of the Brotherhood of Maintenance of Way Employees.

(Exhibits not reproduced.)

OPINION OF BOARD: This is a companion case to MW-8825, except that it involved a different bridge. Our Award in that case of necessity governs this case.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of January 1962.