

Award No. 10722

Docket No. MW-10189

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

**Preston J. Moore, Referee**

**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 the work of making repairs to its so-called 'Kentucky Warehouse' at San Francisco, California to a General Contractor, whose employes hold no seniority rights under the provisions of this Agreement.

(2) Bridge and Building Foreman John Motis and the eight senior B&B employes on B&B Gang No. 1, whose headquarters are in San Francisco, each be allowed pay at their respective straight time rates for an equal proportionate share of the total number of man-hours consumed by the Contractor's forces in performing the work referred to in Part (1) of this claim.

**EMPLOYES' STATEMENT OF FACTS:** The Claimants hold seniority in the B&B Sub-department on the Coast Division and are assigned to B&B Gang No. 1, with headquarters located on Third Street near Fourth Street in San Francisco, California. B&B Gang No. 1 has an assigned work week of Monday through Friday, exclusive of holidays, with rest days of Saturday and Sunday.

Beginning on November 23, 1956, the Carrier let out by Contract, or otherwise to the Zeiskey Company (a general contractor), the work of making repairs to its Kentucky Warehouse, located on Third Street in San Francisco, California. The work consisted of installing a new type of door known as Tole type doors and renewing the underpinning of the floor of the Kentucky Warehouse which is occupied by the Budweiser Beer Company. The Contractor worked approximately three weeks in performing this work, using from four to eight employes per day.

This building is located on the Carrier's right of way and served by its tracks. The work was contracted and paid for by the Carrier without negotiating with the Employes' authorized representatives.

**OPINION OF BOARD:** This is a dispute between the Brotherhood of Maintenance of Way Employees and the Southern Pacific Company.

The Claimants hold seniority in the B&B Sub-department on the Coast Division and are assigned to B & B Gang No. 1.

On November 23, 1956, the Carrier let out by contract the work of making repairs to its Kentucky Warehouse located in San Francisco. The building is located on the Carrier's right of way and served by its tracks. The Carrier's Maintenance of Way and Structures Department Employees were available and qualified to do the work. They had performed repair work on the building many times in the past. The building was leased to several other Companies. The terms of the lease provided that the Carrier maintain and repair the building.

Petitioner contends that Carrier violated the Scope Rule of the Agreement when it employed a Contractor to perform the work. The Scope Rule is as follows:

"(a) Foremen and assistant foremen of bridges, buildings, tunnel, painter, construction, concrete, mason, water supply, plumbing, paving, fence gang, pile driver, and all employees coming under the supervision of such foremen."

There are several awards on this question. The earliest is Award 1610 (Blake). The facts were substantially the same as the instant case. There it was held that if the Carrier owned the building, the work comes within the purview of the Scope Rule.

Later in Award 4783 (Stone) this Board clearly overruled Award 1610. Award 4783 stated: Here the lease, including lessee's covenant to repair is contained in the submission and we might rest our decision here on the precedent reasoning in Award 1610, but we are unwilling to follow its basis of rule. We think the mere fact of ownership of property by the Carrier is not sufficient ground for claim by the Organization of application of contract rights thereon. The common business of the Carrier and Organization is railroad operation, and it is to that business and the property employed in that business alone, that their Agreements apply. Where property is so used no lease or other device should exclude the operation of the Agreement thereon, and where a Carrier owns property not used in the operation or maintenance of its railroad, but for other and separate purposes, such property is outside the purview of the Agreement.

Award 4783 has been followed by Award 9602 (Schodler) and Award 10592 (Hall).

We are of the opinion that where a Carrier owns property not used in the operation or maintenance of the railroad, even if such operation might furnish business for the railroad, that such property is outside the purview of the Agreement.

For the foregoing reasons we believe there was no violation of the Agreement.

**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

For the foregoing reasons we believe there was no violation of the Agreement.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of August 1962.