

Award No. 11229
Docket No. MW-10710

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Phillip G. Sheridan, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

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

(1) The Carrier violated the effective Agreement when beginning on or about September 16, 1957 it assigned or otherwise permitted the work of erecting a yard office building at Beardstown, Illinois to be performed by a contractor's forces who hold no seniority under the Agreement.

(2) All B&B Sub-department employees holding seniority in Groups 1, 2, 3, and 4 on the Beardstown Division 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 the performance of the work referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: The Carrier was in need of a new yard office at its Beardstown Yards and, instead of arranging to have such new building constructed and erected by its Bridge and Building Department forces, it contracted with the Butler Manufacturing Company to construct and erect a one-story gable type metal building which was twenty-four (24) feet wide and fifty (50) feet long, to be partitioned into several rooms and to be equipped with the usual windows and doors.

The Carrier's B&B forces were used to drive the piling for the building footing, to install and construct the necessary concrete foundation and to install the sub-floor and the finished floor for this building. The Contractor's forces performed all steel work and metal work on this building.

Claim as herein was presented and progressed in the usual and customary manner; the Carrier declining claim at all stages of progress.

The Agreement in effect between the two parties to this dispute dated September 1, 1949, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Facts.

able implication therefrom * * *". Since money awards of the National Railroad Adjustment Board are reviewable by the Federal Courts, it should be manifest that a sustaining award here could not be enforced in the manner prescribed by the Railway Labor Act.

In conclusion, Carrier respectfully submits that:

1. The claim is barred under the provisions of Article 1(a) of the August 21, 1954 Agreement because no individual has ever been named as claimant.

2. Work of the nature involved in this dispute has never been performed by Carrier forces in the history of contractual relationship between the parties.

3. Both parties, by their conduct for more than thirty-six years, during which five separate agreements were negotiated, have recognized that the work herein under discussion is excluded from the purview of the Agreement.

4. Awards cited herein, particularly Awards 5521 and 7600 involving contracted work on this property, clearly sustain Carrier's position that the claim is totally without merit.

5. The disposition of claims involving all types of contracting work subsequent to the date of Award 7600, as shown in Carrier's Exhibits 6 to 13 inclusive, proves conclusively that both parties recognize such work as being excluded from the agreement.

6. The action of Petitioner in serving Section 6 notice, immediately subsequent to the date of Award 7600, requesting a rule to cover contracting out work, and President Carroll's explanation before a Senate Subcommittee of the purpose of the proposed rule, clearly bears out the fact that no prohibition against contracting out any work exists in the current agreement.

7. The Federal Court decision identified as Carrier's Exhibit No. 14 holds that unless the employer expressly agrees with the union not to contract out work, it does not violate the collective agreement to have the work performed by outside contractors. That no such expression can be found in the agreement here is evidenced by Item 6 above.

With these irrefutable facts before it, the Board must dismiss the claim for lack of jurisdiction or deny it in its entirety for lack of merit.

* * * * *

The Carrier affirmatively asserts that all evidence herein and herewith submitted has previously been submitted to the Petitioner.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim is based upon an allegation that the Carrier violated the Agreement by contracting out work in erecting a yard office at Beardstown, Illinois. The Organization contends that this work was reserved to them.

The Carrier also contends that this claim should be dismissed because the claim as presented does not comply with Section 1(a), Article V of the August 21, 1954 Agreement.

We have read all of the past awards presented by the respective parties concerning the above procedural issue, and it is our opinion that the claim as presented with respect to the Claimants involved is too vague and indefinite. We cannot ascertain from this claim who the Claimants are and whether they would at the time involved be a proper Claimant. There is nothing in the record to show their employment status at the time the claim arose.

A recent award sustaining this view is 11066.

This claim is dismissed.

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 no jurisdiction over the dispute involved herein.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD.
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 15th day of March 1963.