

Award No. 11658

Docket No. MW-11150

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David Dolnick, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

ALABAMA GREAT SOUTHERN RAILROAD COMPANY

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

(1) The Carrier violated the effective Agreement when, on or about September 1, 1957, it assigned the work of making repairs to its Freight Depot at Chattanooga, Tennessee to a general contractor, whose employees hold no seniority rights under the provisions of this Agreement.

(2) The following Bridge and Building employees, who hold seniority on the territory where the work was performed, each 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.

Paul Goode	C. D. Giford
M. T. Hass	B. M. Culpepper
W. C. Gray	J. R. Davis
F. S. Mince	J. M. Swain
M. W. Rector	J. H. Adams

EMPLOYES' STATEMENT OF FACTS: On or about September 1, 1957 the work of repairing the Carrier's Freight Depot at Chattanooga, Tennessee was assigned to and performed by a General Contractor, who employees hold no seniority rights under the provisions of this Agreement.

The work consisted of such general repairs as installing framing and securing siding thereto to enclose a covered platform and replacing and adding timbers necessary to the installation of overhead sectional doors, and also the installation of overhead sectional doors.

The Carrier's B&B employees have made all repairs and performed the maintenance work on this building since its erection.

All relevant facts and arguments involved in the dispute have heretofore been made known to employe representatives.

Carrier, not having seen the Brotherhood's submission, reserves the right after doing so to make response thereto and submit any other evidence necessary for the protection of its interests.

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier entered into a contract with Hale and Wallace, Inc., to construct an addition to the platform of Carrier's freight station at Chattanooga, Tennessee. The contractor furnished all tools, equipment and labor. It was not repair or maintenance work. It was, rather, new construction which included an addition to the existing freight shed, new 26 overhead doors, wood and steel framing, and corrugated metal siding.

Petitioner contends that the work should have been done by Maintenance of Way employes and argues that Carrier violated the Scope Rule by constructing this work.

This Division, with the same Referee, has considered similar claims, involving the same parties and the same Agreement. Awards 11525 and 11598. The subject matter is discussed at some length in each of these Awards. No purpose is served to repeat our position again. Suffice it to say that it is the consistent position of this Division that under the Scope Rule of this Agreement it is necessary to determine whether the work claimed is historically and customarily performed by Maintenance of Way employes. The burden of proving such custom and practice is upon Petitioner. There is no such proof in the record.

On the contrary, the record shows that Claimants were employed in maintenance and repair work while the new addition was built. No employes were furloughed because the work was done by a contractor.

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 Employes involved in this dispute are respectively Carrier and Employes 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 Carrier did not violate the Agreement.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of July 1963.