

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Levi M. Hall, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
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, on or about October 1, 1957, it assigned the work of remodeling its Freight House and appurtenances thereto at Omaha, Nebraska to a General Contractor whose employes hold no seniority rights under the provisions of this Agreement.

(2) The employes holding seniority in Group 4 of the B&B Sub-department and Group 1 of the Roadway Equipment Machines Sub-department on the Omaha Division each be allowed pay at his 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 (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The Universal Carloading and Distributing Company and the Burlington Truck Lines occupied, under lease, certain of the Carrier's buildings at Omaha, Nebraska, as lessees. Because of the Burlington Truck Lines' desire to enlarge their freight handling operations, the Carrier decided to remodel its Freight House and appurtenances thereto at Omaha to accommodate these two tenants.

Commencing on or about October 1, 1957, the Carrier assigned the work of remodeling its above-mentioned Freight House and appurtenances to the Parsons Construction Company, whose employes hold no seniority rights under the provisions of this Agreement.

The work consisted of the construction of an office and wareroom area within the Freight House which was partitioned into various rooms, making openings in the brick walls for doors and windows, installing new floors, removing old doors and installing new overhead doors, constructing a concrete platform and other work incidental thereto.

The Carrier's Maintenance of Way and Structures Department employes have heretofore been assigned to and performed work of a similar character

OPINION OF BOARD: The Universal Carloading and Distributing Company and the Burlington Truck Lines occupied, under lease, certain buildings owned by Carrier at Omaha, Nebraska. On October 1, 1957, Carrier decided to remodel its Freight House in constructing an office and wareroom area within its Freight House for the accommodation of these tenants. It assigned the work to the Parsons Construction Company, whose employes held no seniority under the provisions of the effective Agreement.

The Petitioner contends that the Maintenance of Way and Structure Department employes have heretofore been assigned to and performed work of a similar character and are equipped with all the tools, equipment and skills necessary to have performed the work here in dispute; that the agreement was violated by Carrier in assigning out the work to the Parsons Company.

It is Carrier's contention that in the handling of this claim on the property, as well as in the appeal to this Board, the Petitioner has failed to name the individuals on whose behalf the claim is made, and who are to be paid the money demanded in part 2 of the claim, in compliance with the August 21, 1954, Time Limits Agreement.

Carrier further contends that the issue here involves the right of the Carrier to continue a practice which has been in effect since prior to the beginning of the contractual relationship between the parties and which has continued in effect without interruption for more than thirty-six (36) years during which time six (6) separate agreements were negotiated without abrogating or changing the practice.

In recent Awards — 11229 and 11230 (Sheridan), a claim using identical language, as here, and between the same parties on the same property, it was determined — "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." For a general discussion of the subject "unnamed Claimants" see Award 11038 — Boyd.

However, because a determination of the precise question presented here has been made on the merits in prior Awards in which the facts were similar, the issues identical, the parties and the property the same, we find it preferable not to dismiss this case on procedural grounds, but rather to follow the precedent established in Award 7600 (Cluster) and Award 10937 (McMahon) which are controlling here, there being no indication of error.

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 the Agreement has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 5th day of September 1963.