

Award No. 12482
Docket No. MW-11968

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Lee R. West, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
GULF, MOBILE AND OHIO RAILROAD COMPANY**

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

- (1) The Carrier violated the agreement when it assigned the repair and reconstruction of one of its bridges, known as Sipsey River Bridge, to a contractor whose forces hold no seniority under the effective agreement.
- (2) Employees holding seniority in the Bridge and Building Department on the Montgomery District 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 work coming under their jurisdiction.
- (3) V. A. Rockwell, Machine Operator, be allowed pay at Multiple Purpose Locomotive Crane Pile Driver Engineer's rate of pay for the same number of man-hours consumed by Contractor's forces in performing work coming under his jurisdiction.
- (4) Section Laborers holding seniority on the section on which this bridge is being reconstructed 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 work coming under their jurisdiction.
- (5) A. B. Moody, Welder, be allowed pay at his respective straight time rate for the same number of hours consumed by Contractor's forces in performing work coming under his jurisdiction.
- (6) Paint Spray Gang employees be allowed pay at their respective straight time rates for an equal proportionate share of the total man-hours consumed by Contractor's forces in performing work coming under their jurisdiction.

Award No. 5304 involves a claim because the Southern Railway entered into a contract for the repair and rehabilitation work in the waiting room, the stairwell leading to the waiting room and the underpass at its passenger station at Danville, Virginia. In denying the claim that certain parts of the work should have been performed by the Maintenance of Way employees, the Board stated:

"The work contracted out is to be considered as a whole and may not be subdivided for the purpose of determining whether some parts were within the capacity of the Carrier's forces (Awards 3206, 4776 and 4954)."

CONCLUSION

Carrier submits that the claim should be denied for the following reasons:

(1) The Maintenance of Way Agreement does not contain any rule restricting the Carrier's right to contract for the construction of a bridge such as that over the Sipsey River.

(2) On two occasions in the past, the Brotherhood has proposed that the Agreement be amended to broadly extend its coverage of work, thereby recognizing that the current agreement does not cover such work. The proposed revisions were not adopted.

(3) The construction of the Sipsey River Bridge was specialized in character, particularly as to the handling and driving of concrete piling, a type of work for which the Carrier does not have the necessary equipment and with which B&B employees had no previous experience.

(4) The Carrier cannot be required to divide the work into small component parts so as to allow claimants to work only insofar as they are qualified or available.

(5) This Board, in innumerable cases, has held that it is proper for a Carrier to contract for the reconstruction of bridges similar to that over the Sipsey River.

(Exhibits not reproduced.)

OPINION OF BOARD: It is the opinion of this Board that the agreement between these parties has been violated.

This claim arises on behalf of Maintenance of Way Employees because the Carrier subcontracted the repair and reconstruction of the Sipsey River Bridge to a general contractor. The old bridge had been destroyed on January 15, 1958. A temporary bridge had been constructed by Carrier Employees but on March 9, 1959 a general contractor commenced and subsequently completed the repair and reconstruction of a new bridge.

The Employees contend that, by virtue of the agreement between these parties, they had the right to the work involved and that the subcontracting of such work violated the agreement. We agree with this contention.

The Scope Rule provides:

"The rules contained herein shall govern the hours of service, working conditions and rates of pay of the Maintenance of Way and Structures Department employes herein named: Bridge and Building Foremen, Assistant Foremen, Carpenters, Paint Spray Operators, Brickmasons, and Laborers; Extra Gang Foremen, Assistant Foremen, and Laborers; Section Foremen, Assistant Foremen, Relief Foremen and Laborers; Pile Drive Engineers and Firemen, Ditcher Engineers and Firemen, Self-Propelled Coal Hoist Engineers and Firemen of Northern and Southern Divisions, Steam Shovel Engineers, Cranemen and Firemen, Weed Burner Operators and Helpers and Sprinkle Machine Operators, Dragline Operators and Helpers, Rail Oiling Machine Operators, Weed Mowing Machine Operators on Northern and Southern Divisions, and Jordan Spreader Operators; Acetylene Welder Foremen, Welders, Welder-Grinders and Helpers, while in Maintenance of Way Service; Pumpers, and Crossing Watchmen; Coal Chute Foremen, and coal chute laborers, employed exclusively in the operation of Coal Chutes; Plumbers while engaged in Maintenance of Way and Structures service; Water Service and Motor Car Repairmen on Alabama, Tennessee and Louisiana Divisions.

NOTE: If and when electric welding is substituted for acetylene welding, then electric welder foremen, welders and helpers will be understood to be included within this scope while in Maintenance of Way Service."

This rule does not expressly reserve the work involved to the employes. However, Employes have shown that the employes have heretofore constructed, repaired and maintained all bridges on this property. It is admitted that this was the first bridge work contract let under this agreement. Further, the Employes have produced evidence that they are capable of repairing and reconstructing bridges of the size and caliber involved and of performing bridge work of this type or nature. We therefore, hold that the work involved was within the scope of the agreement between these parties.

In Award 3626 (Lewis) the Board said:

"We recognize the principle that a Carrier may not contract out to others the performance of the type of work covered by the scope of the Agreement." (Emphasis ours.)

Inasmuch as the employes have demonstrated their ability to do the type of work involved and have a past practice of performing such work, to allow the sub-contracting of such work would emasculate the agreement between these parties.

Carrier contends that it should be allowed to contract this work out because here, for the first time, concrete piling was used and that the employes had never constructed a bridge using concrete piling. Employes rebut this contention by showing that concrete doesn't involve any radical change in technique nor in the machinery required. They point to ever changing methods and techniques in construction and contend that the agreement intended to encompass the work involved, together with the changing techniques and methods. In Award 864 it was stated:

"The agreement is clearly applicable to certain character of work and not merely to the method of performing it. To hold otherwise would operate to destroy collective bargaining agreements. Improved

methods have no more effect upon such agreements than such agreements have upon the right of the carrier to install such methods. Certainly no one would question the right of carriers to make improvements in methods of performing work and we think it is equally true that improved methods do not operate to take the work out from under contracts with employes performing same. The teletype is simply a new and improved mechanical device used for the performance of the same work theretofore performed by the use of Morse instruments."

We agree with the language of that Award.

Carrier further contends that they would be required to purchase much additional equipment to perform this work. Employes, however, point out that only modification of existing equipment would be required. They further properly contend that Carrier cannot avoid the obligation of its agreement with the employes by the simple expedient of failing to furnish the tools and equipment reasonably necessary to perform work covered by the agreement.

For the above reason, we find that the agreement has been violated.

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 been violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of April 1964.