

Award No. 13171
Docket No. MW-12751

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Benjamin H. Wolf, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CHICAGO AND NORTH WESTERN RAILWAY COMPANY

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

(1) The Carrier violated the effective Agreement when it assigned or otherwise permitted employes of the Superior Water Proofing Company to perform tuck pointing work on the passenger station facilities at Boone, Iowa.

(2) B&B Foreman Thomas L. Tracy, Assistant Foreman Wayne Crouch, B&B employes William Anderson, E. Mickelson, Chester Louk, Guy F. Brogden, Joseph A. Tilley, E. A. McVicker, E. L. Koppenhaver, Robert Mayfield, Robert Killion, W. N. Stockman and Cleo C. Brown 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 his claim.

EMPLOYEES' STATEMENT OF FACTS: In 1959, the Carrier authorized additional employes on the B&B gang at Boone, Iowa, for the purpose of tuck pointing its passenger station facilities at that location. However, a washout occurred on one of the Carrier's branch lines and the aforementioned B&B gang was called and used to assist in making the necessary repairs. Upon return to Boone, Iowa, the Carrier, instead of having this gang proceed with the tuck pointing of its passenger station facilities, reduced its B&B forces as may be noted from the following quoted letter:

"Belle Plaine, Iowa
June 27, 1960

Mr. P. J. McAndrews
General Chairman
1½ E. 3rd St.
Sterling, Ill.

Dear Sir & Brother:

In reference to your letter of June 21, 1960, to Mr. M. S. Reid, about contracting the tuck pointing on passenger station at Boone, Iowa.

tracting of work even if the work so contracted had previously been performed by employees of the carrier.

Claims are not supported by any provisions of the schedule agreement between the Chicago and North Western Railway Company and the Brotherhood of Maintenance of Way Employees effective January 1, 1947; in any event, the organization specifically recognized the right of the carrier to contract work even if this was not in accordance with existing practices.

The claims are without merit and should be denied.

OPINION OF BOARD: The claim here questions Carrier's decision to contract out work of tuck pointing Carrier's passenger station and annex at Boone, Iowa. The work consisted of preparing and tuck pointing all brick and stone areas on the station and annex, caulking all windows and door frames and applying a water repellant coating with a low pressure spray. The job required 791 man-hours of work by tuck pointers and mason tenders and 152 man-hours of supervision and it took from April 1 to May 12, 1960.

The Organization asserts that this work belongs to Maintenance of Way employees as a seniority right over forces which hold no seniority or employment rights under the effective Agreement. A study of Awards on this property reveal that this Board has held work within the Scope of the Agreement belongs to the Organization and may not be contracted out with impunity except when the employees do not have the requisite skills, or the Carrier does not possess the necessary tools and equipment or the work is of such magnitude it could not be handled by the employees. When an exception is claimed, the burden is on the Carrier to prove that the exception is warranted. See Awards 4158, 4159, 5090, 5839, 5840, 5841, 6234, 6299, 6300, 12132 and 12961.

The Carrier's position was that the Employees did not have the requisite skills and were not equipped with the proper tools to perform the work satisfactorily. This was denied by the Organization. Carrier's position was based on the allegation that power tools were necessary to grind out joints in which mortar had deteriorated or eroded to the depth of several inches. It asserted that power tools were more efficient than hand chisels used by B&B employees in performing such work.

Carrier's position with respect to the skills of the B&B employees is by its own admission, unfounded. In its reply brief (page 3) appears the following: "The Carrier conceded in its Ex Parte Submission in this dispute that B&B employees have done tuck pointing in the past." It also conceded that it had originally authorized three extra carpenters in the B&B area at Boone to do some AFE work on 14 bridges, "along with some tuck pointing work on the freight house, office building and the passenger station at Boone." This was the very work which was later contracted out.

The reason for the change of plans from using its own B&B employees to contracting the work out was explained by Carrier as resulting from an inspection trip which decided the Vice President and Chief Engineer "to do a thorough job." Also involved in this decision was some dissatisfaction over the way the B&B forces had done a small masonry job because they had failed to clean mortar from the face of the brick.

It is apparent from the record that the original reasons for contracting out the work, i.e., the lack of skills and tools, could not be substantiated.

Carrier then fell back on the allegation that similar work such as this had been contracted out for years, and it listed 20 such projects, none of which was for tuck pointing.

The difficulty with this argument is that there is no way to ascertain if any of these projects, assuming any included tuck pointing, were done as exceptions to the Rule or not, or done with or without the Organization's consent. We are satisfied that on this property the awards require that no work within the Scope of the Agreement to be contracted out without the Organization's consent unless the Carrier is prepared to justify that the work fell within the exceptions to the Rule.

The only justification for contracting out this work seems to be the size of the project, 791 man-hours plus 152 man-hours of supervision, a total of 943. The record, however, is devoid of any claim that the magnitude of the job was exceptional. Carrier's M. S. Reid, in writing to the Employee's General Chairman to ask approval of contracting the work, mentions only that there were no furloughed B&B employees available as his reason. We are compelled to the conclusion that Carrier did not sustain its burden of proving that this work was exceptional.

Although we find a sustaining award necessary to preserve the rights of the Organization under the Agreement, we do not find the same need to sustain a money award. It appears that all the Claimants were fully employed and suffered no damages. See Award 12961 (Hall).

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

That the Agreement was violated.

AWARD

Claim No. 1 sustained.

Claim No. 2 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 16th day of December 1964.