Award No. 14019
Docket No. MW-11914

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

SOUTHERN PACIFIC COMPANY
(Pacific Lines)

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

(1) The Carrier violated the effective Agreement when, on December 9, 10, 11, 12, 15 and 16, 1958, it assigned the work of reroofing its Warehouse Building at 45 Hubbell Street, San Francisco, California to the Fred S. Hall Roofing Company.

(2) The Bridge and Building Foreman, Mechanics and Helpers on the Coast Division, who were assigned to B&B Gang No. 1, 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.

EMPLOYES' STATEMENT OF FACTS: During December of 1958, the claimants, who have established and hold seniority in the Bridge and Building Sub-department on the Coast Division were regularly assigned to B&B Gang No. 1, then headquartered at San Francisco, California.

On December 9, 10, 11, 12, 15 and 16, 1958, the Carrier assigned the work of reroofing its Warehouse Building at 45 Hubbell Street, San Francisco, to the Fred S. Hall Roofing Company whose employes hold no seniority rights under the provisions of this Agreement.

Three hundred thirty-six (336) man-hours were consumed by the Contractor's forces in the performance of the aforementioned reroofing work.

The Carrier's Maintenance of Way and Structures Department employes were avaiable, fully qualified and could have expeditiously performed the work assigned to contract, having heretofore usually and traditionally performed work of similar character on Carrier-owned buildings.

Although the Carrier leases this building to the J. V. Moan Commissary Company, the Carrier (the lessor) was and is responsible for and is obligated to maintain and repair the building at the Carrier's expense.

OPINION OF BOARD: In its submission to the Board the Carrier took the position that the claim had not been handled in accordance with the requirements of Article V of the Agreement of August 21, 1954. That issue was referred to the National Disputes Committee established by Memorandum Agreement dated May 31, 1963, to decide disputes involving interpretation or application of certain stated provisions of specified National Non-operating Employe Agreements. On March 17, 1965, that Committee rendered the following Findings and Decision (NDC Decision 4):

"FINDINGS: (ART. V) Paragraph 1(a) of Article V of the August 21, 1954 Agreement provides that —

'All claims or grievances must be presented in writing by or on behalf of the employe involved * * *'

In its submission to the Third Division, carrier contends that the claim fails to identify any claimant, as required by Article V. Employes reply that 'each individual claimant is identified exactly as well as if they were listed in this submission by their respective given names * * *.'

The National Disputes Committee rules that the claimants are adequately identified as the incumbents of the specific positions named in paragraph (2) of the claim, as of the dates mentioned in paragraph (1) of the claim.

DECISION: The 'Statement of Claim' identifies the claimants as the incumbents of the specific positions named in paragraph (2) of the claim, as of the dates mentioned in paragraph (1) of the claim.

This decision disposes of the issues under Article V of the August 21, 1954 Agreement. The docket is returned to the Third Division, NRAB, for disposition in occordance with Paragraph 8 of the Memorandum Agreement of May 31, 1963."

The material and relevant facts are not in dispute. The warehouse building referred to in the claim is owned by the Carrier but was leased to a commissary company. It was not used in the operation or maintenance of the railroad.

In December of 1958 the Carrier contracted with a roofing company to resurface the roof of the warehouse. The job was completed on December 16, 1958.

The "contracting out" of the work of re-roofing the leased building is alleged by the Employes to have been a violation of the Scope Rule of the Maintenance of Way Agreement.

The Division has denied similar claims involving the same parties present here and the same agreement rules relied on. See Awards 9602, 10080, 10722, 10986, 11150 and 11462. These Awards adopt and apply the findings of Award 4783, where it was held,

". . . We think the mere fact of ownership of property by the Carrier is not sufficient ground for claim by the Organizatition of application of contract rights thereon. The common business of the

Carrier and Organization is railroad operation, and it is to that business and the property employed in that business alone, that their Agreements apply. Where property is so used no lease or other device should exclude the operation of the Agreement thereon, and where a Carrier owns property not used in the operation or maintenance of its railroad, but for other and separate purposes, such property is outside the purview of the Agreement."

The Board has been reluctant, and properly so, to set aside its prior adjudications of disputes involving substantially the same facts and the same contractual provisions, unless, of course, those decisions are shown to have been clearly erroneous on the law and the facts. (See 4th Div. Award 793; 2nd Div. Award 3991; 3rd Div. Award 12240.) No such showing has been made here. The Awards cited have dealt squarely with the issue raised and the merits of each case. They constitute a determination of the dispute which must be treated as binding upon the parties under a consistent interpretation of their agreement by the Board. We find no reason for disturbing what ought now to be a settled matter on this property.

In view of the foregoing, the claim will be denied.

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 was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of December 1965.