

NATIONAL RAILROAD ADJUSTMENT BOARD**THIRD DIVISION**

George S. Ives, Referee

PARTIES TO DISPUTE:**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES****ILLINOIS CENTRAL RAILROAD COMPANY**

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

(1) The Carrier violated the Agreement and past practices thereunder when, beginning on or about April 6, 1961, it assigned or otherwise permitted the grading and dirt moving work in connection with the building of piggyback facilities at Jackson, Mississippi to be performed by a contractor's employees who hold no seniority rights under the provisions of the Agreement.

(2) The Carrier further violated the Agreement when, beginning on or about May 15, 1961, it assigned or otherwise permitted the work of unloading, spreading and packing of slag, the work of paving of the parking area and other work incidental thereto in connection with the building of piggyback facilities at Jackson, Mississippi to be performed by a contractor's employees who hold no seniority rights under the provisions of the Agreement.

(3) Roadway Machine Operators M. H. Johnson, H. O. Anglin, R. L. McCorkle, W. M. Dixon, Jr., S. L. Anglin and A. L. Beauchamp each be allowed pay at their respective straight time rate 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 this claim.

(4) Roadway Machine Operators M. H. Johnson, H. O. Anglin, R. L. McCorkle, W. M. Dixon, S. L. Anglin, A. L. Beauchamp and Bridge and Building Department employees J. L. Adams, L. L. Joiner, L. L. Ducan, John Fleming, Henry Hughes, W. W. Martin, Less Butler, Lonnie Tarver, Douglas Butler, P. H. Scarbough, Roosevelt Williams, Frank Furlow, J. E. Wagner, and M. T. Joiner 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 (2) of this claim.

Lonnie Tarver — B&B helper — worked full time at \$2.23 per hour, plus 52 hours' penalty overtime, on automobile unloading center. (Away from work 5 hours on May 15 at own request.)

J. E. Wagner — B&B helper — worked full time at \$2.23 per hour on sand dryer, plus 33 hours' penalty overtime on week ends at automobile unloading center. (Was laid off from B&B Gang 326, but worked in Gang 324 at Jackson, Mississippi.)

M. T. Joiner — B&B helper — was laid off in force reduction from B&B Gang 326 and refused the opportunity to work while the company was required to pay overtime to other employees.

The claimants who assisted in construction of the automobile unloading and distribution center performed the following work thereon:

1. Constructed the heavy-timbered bulkhead retaining walls for the unloading ramp and assisted to fill it with stone in the preparation for paving.
2. Assisted to excavate for and install drainage system.
3. Assisted to unload and spread crushed stone.
4. Installed 1,370 feet of six-foot chain link fence, posts, and gates around the parking area.

The vapor lighting system was installed by Illinois Central maintenance of way electricians.

The spur tracks were installed by Illinois Central maintenance of way track forces.

The schedule agreement, effective September 1, 1934, as amended, is by reference made a part of this submission.

(Exhibits not reproduced.)

OPINION OF BOARD: Petitioner contends that Carrier violated the Scope and Seniority rules contained in the Agreement by contracting to outside firms certain excavation, grading and paving work incident to the construction of an automobile and distribution center.

The Scope Rule of the Agreement is general in form and contains no job descriptions. It is well established on this Board in claims of this kind that the work "contracted out" must be of the type that historically and traditionally has been exclusively assigned to and performed by employees under the Agreement between the parties. The burden of establishing the essential facts must be carried by the Petitioner through competent evidence. Mere assertions are not proof.

Carrier cites a number of our awards arising out of previous disputes between the same parties concerning the application of the Scope Rule contained in the Agreement to the question of Carrier's right to contract work out to third parties. (Awards 12298, 11887, 11832 and 10540) Petitioner relies solely on the Scope Rule and mere assertions that the work in dispute belongs to Claimants.

Therefore, we find that Petitioner has failed to satisfy its burden of proof. Inasmuch as Petitioner has failed to prove that the disputed work belonged exclusively to Claimants, the seniority rules contained in the Agreement do not become applicable. (Award 9963)

Accordingly, we will deny the claim.

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 Carrier did not violate the Agreement.

AWARD

The Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 16th day of November 1966.