

NATIONAL RAILROAD ADJUSTMENT BOARD**THIRD DIVISION****(Supplemental)**

Daniel House, Referee

PARTIES TO DISPUTE:**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES****SOUTHERN PACIFIC COMPANY
(Pacific Lines)****STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the agreement when, beginning with May 12, 1962, it assigned or otherwise permitted individuals holding no seniority within the scope of this agreement to perform the work of dismantling Bridge No. 92.16.

[Carrier's File MofW 152-557]

(2) Furloughed B&B employees J. W. Young, E. C. Lynch, W. J. Gordon, H. E. Correll, G. J. Kerry, J. G. Martinez, H. D. Martinez, H. A. Barringer, C. Williams, C. A. Rice, R. W. Troy, C. E. Hickman, C. T. Hall, D. L. Dahn, G. A. Walsh, F. Hansen, R. A. Betty, M. W. Nelson, J. Jackowski, H. T. Westhusin and E. Powolny, and employees assigned to B&B Gang No. 11, each be allowed pay at his respective straight time rate for an equal proportionate share of the total number of man hours consumed by outside forces in performing the work referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: Beginning on May 12, 1962, employees of the J. P. Smith Building-Wrecker Contractor, who hold no seniority under the Agreement, performed the work of dismantling Bridge No. 92.16. This work consisted of dismantling a 1325 foot timber trestle with ballast deck; removing creosote pile and frame bents; the removal of 65 foot steel girders and concrete abutments. (The removal of the track; the placing of fill to replace the bridge; the placing of a steel culvert and the replacement of track was performed by employees under the scope of the Agreement.)

Bridge 92.16 was located on the Carrier's Sacramento Division. Each of the claimants has established seniority rights in his respective class within the bridge and building sub-department on the Sacramento Division. The claimants were available and fully qualified to perform all of the work assigned to outside forces. Many of the claimants were furloughed, due to a force reduction, and were awaiting recall when the outside forces performed the subject work.

from the date of the first agreement between Petitioner and Carrier covering Carrier's Maintenance of Way Employees down to dates following the last revision of the current agreement. During all that period of time it was Carrier's consistent practice to contract out work in circumstances similar to those involved herein. This practice was well known to the Organization and the employees, and at no time prior to 1952 was it challenged as a violation of the Scope Rule of the current agreement or any other provision of that agreement. In 1952 the employees submitted their first claim based on contracting of earth-moving work, but they promptly abandoned that claim after its denial by Carrier. As evidence of the nature of the practice and the definite knowledge of the Petitioner and the employees, Carrier has attached hereto as Exhibit A a list of typical examples of excavation and earth-handling work and work on bridges, trestles, tunnels and roadbeds contracted out by the Carrier between the years 1920 and 1962 without prior negotiations of any kind with the employees and without objection on the part of the employees that such contracting constituted a violation of any part of the current agreement. During the course of negotiations for the 1953 revision of the current agreement, Petitioner submitted a proposal to amend the Scope Rule so that it would read as follows:

"SCOPE.

The rules contained herein shall govern the hours of service, working conditions and rates of pay of all employees in any and all sub-departments of the Maintenance of Way and Structures Department, represented by the Brotherhood of Maintenance of Way Employees, and such employees shall perform all work in the Maintenance of Way Structures Department . . ." (Emphasis ours.)

The manifest object of this proposal was to deprive Carrier of the right it had under the original Scope Rule to contract out work. The proposal was rejected and the original Scope Rule under which Carrier had consistently been accorded the right to contract out work was readopted without change.

4. By letter dated June 6, 1962 (Carrier's Exhibit B), Petitioner's Division Chairman submitted claim on behalf of certain named furloughed employees and also all employees assigned to B&B Gang No. 11 that they be ". . . allowed pay at their respective straight time rates for an equal proportionate share of the total man hours consumed by the contractors force, the work in violation referred to in Part 1 of our Statement of Claim." That claim was denied by Division Superintendent in his letter dated July 17, 1962 (Carrier's Exhibit C). By letter dated August 9, 1962 (Carrier's Exhibit D), the General Chairman appealed the claim to Carrier's Assistant Manager of Personnel, which the latter denied by letter dated October 29, 1962 (Carrier's Exhibit E).

(Exhibits not reproduced.)

OPINION OF BOARD: This is a sub-contracting case based on the fact that Carrier had employees of a Contractor who held no seniority under the Agreement dismantle a bridge. As we have frequently held in cases involving these parties as well as generally, in a sub-contracting case before the burden rests on Carrier to justify the contracting out of particular work, the burden is Employees to prove that the involved work normally is reserved exclusively to it. In this record the Employees have failed so to prove.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 25th day of January 1968.