

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John J. McGovern, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
SOUTHERN RAILWAY COMPANY**

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

(1) The Carrier violated the Agreement when it assigned to outside forces the work of replacing the old tile roofing with asphalt shingle roofing on a portion of the roof on the shed and the main building at the passenger station at Spartanburg, South Carolina. (Carrier's file MW-22822.)

(2) B&B Foreman H. A. Webster, B&B Mechanics W. T. Bryant and C. C. Holyfield, B&B Helpers W. A. Kinard and W. G. Shelton and B&B Apprentices W. Trapp and L. Brown each be allowed pay at their respective rates 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: During the period between March 1 and April 22, 1965, the work of replacing the tile roof on the passenger station at Spartanburg, South Carolina with asphalt shingles was performed by forces outside the scope of the Carrier's agreement with the Brotherhood of Maintenance of Way Employees. The aforesaid work was assigned to outside forces without benefit of negotiation and agreement with the employees.

The performance of said work did not require any special tools or skills beyond that possessed by the Carrier's B&B department employees.

Claim was timely and properly presented and handled by the Employees at all stages of appeal up to and including the Carrier's highest appellate officer.

The Agreement in effect between the two parties to this dispute dated August 1, 1947, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: Part (1) of claim alleges violation of the agreement because Carrier, in accordance with the established and recognized practice, contracted a construction project where the contractor

Furthermore the NRAB has on numerous occasions declined to make sustaining awards where, as here, claimants were on duty and under pay when the claimed work was performed. Please see Second Division Award 3967 and Third Division Awards 10963 and 13958.

Claim being without basis and not supported by the agreement cited and relied upon payment is declined."

On June 17, 1966, the Director of Labor Relations wrote the General Chairman as follows:

"In our conference on June 16 we discussed the 'claim on behalf of H. A. Webster, B&B foreman, W. T. Bryant and C. C. Holyfield, B&B mechanics, W. A. Kinard and W. G. Shelton, B&B helpers, W. Trapp and L. Brown, B&B apprentices, for pay at their respective rates for an equal amount of time consumed by employees of the contractor while removing old tile roof and applying new asphalt shingles on the passenger station at Spartanburg, South Carolina, between March 1 and April 22, 1965.'

The facts in connection with this claim have already been explained to you in considerable detail. There is no point in repeating them. I emphasize however the fact that the claimants were on duty and under pay when the claimed work was performed and were not adversely affected. In addition I call your attention to two recent decisions of the U. S. District Court in Greensboro, North Carolina involving similar circumstances where the court refused to award punitive damages even in situations where the Board held that the agreement was violated. Naturally we do not concede there was any violation in the instant case. Actually there was none.

Claim being unsupported by the agreement and without basis, I confirm my previous declination of the same."

OPINION OF BOARD: This is a classical Scope Rule case, wherein it is alleged by the Organization that Carrier, by engaging the services of an outside, independent contractor for the performance of certain work, stands in violation of the afore-cited Rule.

In Award 12929, facing the identical issue, we said

"The pertinent Scope Rule is general in nature, merely listing the various categories of workers covered. It does not describe the work covered by the Agreement. By way of a prefatory remark, it states that 'These rules govern the hours of service and working conditions of the following employees in the Maintenance of Way and Structures Department, etc;' and then lists the types of employees covered.

The language of the Scope Rule is clear and unambiguous. It does nothing more than govern the hours and working conditions of the employees. It does not delineate nor grant to the employees a specific type of work to be done by them exclusively."

We adopt the cited award and the reasoning contained therein. We will accordingly 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 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 24th day of May 1968.