Award No. 17710
Docket No. MW-18210

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Charles W. Ellis, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
THE BELT RAILWAY COMPANY OF CHICAGO

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

(1) The Agreement was violated when the Carrier assigned or otherwise permitted outside forces to install road crossings and culverts during the month of June, 1967. (System file 100 MofW).

(2) Section Foreman N. Caputo and Trackmen J. Willesenor, E. S. Covarubias, Z. Guerrero, P. O. Varelas, R. Camargo, R. Rodrigues and M. Miranda each be allowed pay at their respective straight time rates for an equal proportionate share of the total number of man hours expended by outside forces in the performance of the work described within Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: The facts pertinent to the instant dispute were clearly set forth within correspondence reading:

Letter "A"

"July 27, 1967

Mr. W. L. Termunde
Supervisor—B&B Department
Belt Railway Company of Chicago
6900 So. Central Avenue
Chicago, Illinois 60638

Dear Sir:

During the month of June, the Carrier assigned or otherwise permitted outside forces to install road crossings and two culverts near Leamington and 71st Street. Crossings were installed at General Service Administration Lead, Chicago Industrial District, Carson Pirie Scott Lead, Belt South Industrial Lead at 71st Street, the Cox Metal Company Lead and the Strech Highway Trailer Lead. A total of seven road crossings were installed and two culverts. We consider this to be a violation of the agreement and of established practices thereunder and we are, therefore, filing claim in behalf of Foreman N. Caputo and Trackmen J. Willesenor, E. S. Covarubias, Z. Guerrero, P. O. Varelas, R. Camargo, R. Rodrigues and M. Miranda for pay at their respective straight time rates for

tractor sought the Carrier's permission and obtained it from Mr. Chapel so the Carrier had definite knowledge that these crossings would be installed and had knowledge of the methods to be used in installing them.

In view of the foregoing, we trust that you will be agreeable to allowing the claim as presented and that you will advise me accordingly. In the event you are not so inclined, will you please advise the time, date and place I can meet with you for the purpose of discussing this matter with you before you render your decision."

I saw no basis for the claim and declined same on March 22, 1968 in the following manner:

"Please refer to your letter dated January 25, 1968 concerning the claim you are appealing on Mr. Chapel's decision of November 27, 1967 because so-called outside forces installed the road crossings and culverts.

As has been explained to you, the materials in question were installed as a temporary measure by a contractor and not for use of this Company. The contractor performed no work for the Belt Railway and consequently there has been no violation of your agreement. The claims are therefore declined.

If, upon further consideration you still desire to discuss this case with me, I will be glad to do so if you will drop into my Office around 8 o'clock any morning."

The current agreement between this carrier and its employees represented by the Brotherhood of Maintenance of Way Employees, as amended to July 1, 1966 is on file with the Board and by reference is made a part of this submission.

OPINION OF BOARD: The facts here are that Carrier permitted outside forces to perform certain work on Carrier's property, the exact nature of which is disputed. It is enough to say that the work is in the nature of the construction of crossings and culverts which has in the past been performed by some employees of the Carrier.

The Organization is required to satisfy the burden of proof on two separate questions. First, is the work in question reserved exclusively to any employee of the Carrier? Second, if it is, is the work exclusively reserved to these claimants who are members of the Carrier's track department?

The Scope provision in question does not define the nature of the duties of which the job consists but merely lists the title of the positions.

Carrier urges that this type of work is not reserved to any of Carrier's employees, in fact, it is not even work which is within Carrier's "jurisdiction" or which Carrier has the power to award.

This defense is not based upon the nature of the work performed because Carrier admits that this type of work is performed by Carrier's B & B employees when performed by any employees of Carrier.

It is Carrier's position that in order for any employee to be able to lay claim to the work the work must be performed "for and on behalf of the Carrier". Carrier cites several cases in support of this proposition but which are distinguishable from this case either because the work was performed on

property other than the Carrier's, Award 14973 (Ritter), Award 14888 and 14889 (Zumas), Award 14420 (Stark), Award 13366 (Moore) or because the work was done pursuant to a directive of a governmental body possessing police powers. Award 15906 (McGovern), Award 14492 (Wolf).

It seems that if Carrier is going to make an agreement reserving work to its employees it owes the duty to reserve to them all of the work of that type it has the legal power to perform. Special Board of Adjustment #285, Award 10. Carrier could have negotiated for this work for its employees with The Peoples Gas Light and Coke Company and it had an obligation to do so under its current agreement.

The second proposition which Organization must prove is another matter. To prove its first proposition, Organization cites Carrier's statement that this type of work is ordinarily performed by B & B employees. We agree that this has probative value in proving Organization's first proposition but it obviously, on its face, defeats any claim of the track department employees to this work. If this statement is accepted for the purpose of proving that Carrier's employees generally perform this work it must be accepted for the purpose of proving which employees perform the work.

Claimants are members of the track department and the work belonged to the B & B forces.

Organization maintains that Carrier's assertions that this work is historically B & B department work is a new defense not raised on the property; therefore, not subject to consideration here. It is enough to say that Organization has raised this issue to bolster its own case and, therefore, it may be considered for every issue it has relevance to.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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

Claimants are not entitled to the work in question.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of February 1970.

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