



Award Number 17961

Docket Number MW-18331

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John J. McGovern, 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 it used track subdepartment employes instead of B&B subdepartment employes to perform the work of installing storm drain culverts under the yard tracks at Tucumcari, New Mexico. (System File MofW 152-669)
- (2) B&B employes B. T. Snelling, F. P. Rangel, Francisco Barragan, R. C. Bogart Jr., A. A. Chavez and Leon Graves each be allowed pay at his respective straight time rates for an equal proportionate share of the total number of man hours expended by Track Subdepartment employes in performing the work referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: On and subsequent to September 20, 1967, the Carrier assigned and used track subdepartment employes to perform bridge and building subdepartment work at Tucumcari, New Mexico. This work was performed under instructions of the B&B supervisor and was performed under the immediate supervision of B&B Carpenter R. C. Bogart, Jr.

The work consisted of installing eighteen (18) storm drain culverts at various locations underneath yard tracks at Tucumcari, New Mexico. Thirteen of these culverts were of steel composition and were 12"x13' in dimensions. The others were of corrugated galvanized metal composition; one of which had dimensions of 36"x40' and the remaining four had dimensions of 24"x20'. The work required tunneling under various yard tracks, installing the various culverts and then to backfill the excavated area.

Work of this character has traditionally been recognized as belonging to the B&B subdepartment and the employes of B&B Gang #17 were available and only qualified to perform all of the work involved here. Superintendent Coltrin acknowledged that culvert installation work belongs to employes of the B&B subdepartment when, within his letter of declination dated November 1, 1967 (Letter "J"—Position of Employes), he stated

"Investigation of this case develops that work in connection with the installation of steel culverts and corrugated galvanized culverts at various locations underneath the yard tracks at Tucumcari, New

By letter dated November 3, 1967 (Carrier's Exhibit "C"), Petitioner's District Chairman gave notice that the claim would be appealed.

By letter dated December 7, 1967 (Carrier's Exhibit "D"), Petitioner's General Chairman appealed the claim to Carrier's Assistant Manager of Personnel; and by letter dated June 25, 1968 (Carrier's Exhibit "E"), the latter denied the claim.

(Exhibits not Reproduced)

OPINION OF BOARD: Carrier engaged the service of an outside, independent Contractor for the purpose of grading and constructing embankments for a series of roads running parallel to several of Carrier's yard tracks at Tucumcari, New Mexico. Together with the employees of the Contractor, work was performed by the Carrier's Maintenance of Way Department forces "which included the rearrangement of the yard tracks to provide sufficient clearance between adjacent parallel yard tracks for the proposed roadways to run on each side of several tracks."

According to the Carrier, one of the provisions of its Contract with the independent Contractor was that Carrier forces would perform the work of removing and installing all trackage including the placement of all necessary pipe culverts to handle drainage. The instant claim arose when Carrier began the installation of culvert pipes. Extra Gang No. 152, consisting of a foreman and laborers of the track Sub-department, was assigned to remove and replace the ballast, ties and/or rail for installation of the culvert pipes across the trackage. Although there is some dispute between the opposing parties as to whether or not tracks were removed, we do not consider this factor to be of over-riding significance.

Succinctly stated, the claim as presented is that Carrier violated the Agreement "when it used track subdepartment employees instead of B&B sub-department employees to perform the work of installing storm drain culverts under the yard tracks at Tucumcari, New Mexico." The Organization alleges a violation of the Scope Rule, among other rules. In order to succeed in this Case, the Organization, being confronted with a general type Scope Rule, must show by a preponderance of evidence, that the work involved was done by B&B employees to the exclusion of all other employees; that by history, tradition and practice such work has been performed by them. We find no such evidence in this record and must accordingly deny the claim.

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 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.

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 28th day of May 1970.