



Award Number 5957

Docket Number 5853

2-IC-EW-'70

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Nicholas H. Zumas when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 99, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O.
(Electrical Workers)**

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier violated the current Agreement on the Northern Lines beginning on or about January 3, 1968 and subsequent thereto, when it allowed employes of the Diversified Metals Company of St. Louis, Missouri, other than Electrical Workers covered by the Agreement, to come on the Illinois Central Railroad Company property and take down line wire off the Carrier's owned pole lines.
2. This being a continuing claim that the Carrier be ordered to compensate Claimants Linemen H. G. Wills, P. E. Treece, P. N. Toler, R. W. Bailey, H. E. Coomer and Lineman Helper K. M. Thornton at the pro rata rate for one hundred thirty-six (136) hours each and Lineman R. W. Treece for fifty-six (56) hours as enjoyed by the employes of the Diversified Metals Company up to and including January 25, 1968, plus any additional compensation to which they, or other Linemen covered by this Agreement, are entitled to due to this continuing violation.

EMPLOYEES' STATEMENT OF FACTS: The Illinois Central Railroad Company, hereinafter referred to as the Carrier, has an agreement with the Electrical Workers (Linemen) of System Federation No. 99, hereinafter referred to as the Claimants, which has been in effect since April 1, 1935.

The Claimants listed above in paragraph 2 of the Employees' Statement of Claim hold seniority under this Agreement and are listed on the Communications Department Northern Lines Seniority Roster.

The above named Claimants, with the exception of Lineman Helper Thornton, are carried on the Northern Lines' Seniority Roster Communications Department under the classification of Linemen. Claimant Thornton is carried on the Helpers' seniority roster.

The Claimants' duties, with the exception of Claimant Thornton, are to perform all work coming under the Special Rules Classification of Electricians and/or Linemen and all other work properly recognized as Electricians' work on the Carrier's Northern Lines. Claimant Thornton's duties are to assist the Electricians and/or Linemen in the performance of their duties.

had been sold to M&M before its employees were called upon to dismantle and remove it. At the time it was performed, that work no longer belonged realistically under the terms of the Schedule Agreement, within the classification of work rules applicable to Carriers employees."

The claim will be denied. See Award 12."

In this case, as in the above cited awards, the wire was sold in place to the purchaser. Employees of Diversified Metals removed the dead wires which were their own property and no longer a part of the railroad's operations.

Conclusion

This claim is before the wrong Board. Article VI, Section 8 of the September 25, 1964 agreement clearly provides that cases involving sub-contracting are to be submitted to the Special Board of Adjustment. The case should be dismissed.

Without prejudice to its position that this claim is before the wrong Board, and therefore should be dismissed, the company has shown the following.

Removal by Diversified Metals' forces of the abandoned and retired wires, did not, as the Brotherhood has alleged, constitute the "building, repairing, and maintaining of pole lines."

The removal of the abandoned and retired wires by Diversified Metals' forces did not constitute the performance of "other work properly recognized as lineman's work."

The wires in question were no longer needed for railroad purposes or owned by the railroad. The wires were the property of the Diversified Metals Corporation and the Board has upheld the right of an owner to enter railroad property in order to install, service or remove their own property.

Furthermore, even if the railroad were required to perform the work with Illinois Central forces, there is nothing in the agreement which reserves the work to electricians. There is no electrical skill involved in the simple act of clipping wires from a pole and rolling it up.

Finally, the claimants have not suffered any monetary loss as they were fully employed on the dates of the claim.

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Abandoned communication line wire was sold by Carrier to Diversified Metals Company, a private concern. Employees from that concern came onto Carrier's property and removed the wire from poles.

The Organization contends that this was work belonging to it under the Agreement between the parties. The Board does not agree. While several questions were raised in the dispute, the outcome turns on whether the removal of purchased property, not belonging any longer to Carrier, is work that belongs to the Organization.

In denying a similar claim, the Board in Third Division Award 10826 held:

"The Carrier has the legal right to sell its property; and after such sale ownership of such property is then vested in the purchaser thereof. The work of the new owner in removing the purchased property is not—in our opinion—work that could belong to the organization under any rule or theory. * * *"

See also Second Division Award 5732, Award 140 of Special Board of Adjustment 570, and Third Division Award 14420.

A W A R D

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 25th day of June, 1970.

CARRIER MEMBERS' CONCURRENCE TO AWARDS 5957 (DOCKET NO. 5853) AND 5958 (DOCKET NO. 5854)

We agree that the claims in these dockets were without merit for the reasons set forth in the Findings, but they were not properly referable to this Division in the first instance. These claims involved an alleged sub-contracting of work within the classification of work rule and, under the September 25, 1964 National Agreement, disputes of this kind are referable only to the Shop Craft Special Board of Adjustment therein established. Accordingly, the Division should have dismissed the claims for that reason rather than entertain them on their merits. See Awards 5938, 5939, 5940 and 5941 which involved the present parties. To the same effect are Awards 5633, 5667, 5668, 5750 and 5937.

/s/ J. R. MATHIEU
J. R. Mathieu
/s/ H. S. TANSLEY
H. S. Tansley
/s/ H. F. M. BRAIDWOOD
H. F. M. Braidwood
/s/ W. R. HARRIS
W. R. Harris
/s/ P. R. HUMPHREYS
P. R. Humphreys