Award No. 6910
Docket No. MW-6939

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

LeRoy A. Rader, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

RUTLAND RAILWAY CORPORATION

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

(1) The Carrier violated the effective Agreement when it assigned the work of salvaging, dismantling, removing and loading various track and bridge materials on the Chatham Sub-division to the Commercial Construction Company;

(2) Each employe on and/or furloughed from the seniority district in which the afore-referred to work was performed and whose duties and/or seniority rights contemplate performance of the work referred to in part (1) of this claim (all to be determined by a joint check) be allowed pay at their respective straight time rates for an equal proportionate share of the total man-hours consumed by the contractor's forces in performing the work referred to in part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: The Carrier sought and secured approval and authorization from the Interstate Commerce Commission for the acquisition of trackage rights over certain portions of the Boston and Maine Railroad; the Troy Union Railroad, and the New York Central Railroad with concurrent approval and authorization to abandon service over 57.24 miles on its Chatham Sub-division, said requests being covered by Interstate Commerce Commission Finance Dockets No. 17650 and 17651.

In anticipation of a favorable response to the aforesaid requests, the Carrier abolished a number of positions on the territory in question, such abolishments becoming effective January 21, 1952, and affecting fourteen Maintenance of Way Employes. (See submission of both parties in Docket MW-6451, particularly Employes' Exhibit "B"). This fact was brought out during hearings before Mr. A. G. Nye, Examiner for the Interstate Commerce Commission in Finance Docket 17651 as evidenced by the following excerpt taken from the written report of the Commission in connection with the decision rendered on December 9, 1952:

"Evidence adduced at the hearing shows that two track foremen, six track laborers, and a crossing watchman will be displaced if the line is abandoned. * * * Employes adversely affected must be protected whether the effect comes about as a result of the track-

in that Award, this situation " denies the inclusion of the work within the scope of the agreement."

It is the position of this carrier that the work involved in the dismantling and salvaging of material on the Chatham Sub-Division was not covered by the Agreement, and that the contracting of this work by the carrier does not constitute a violation of any rule.

All relevant facts and arguments in this case have been made known to the employes' representative.

(Exhibits not reproduced.)

OPINION OF BOARD: The factual background which brought this dispute into being was the abandonment by Carrier of a Sub-Division between Chatham and Bennington, a distance of approximately 57.24 miles on authority granted by the Interstate Commerce Commission. The work of dismantling of equipment used on this sub-division in accordance with the record was of considerable magnitude and the work was performed by an outside contracting firm. The Organization makes claim to this work.

Petitioners in support of the position taken cite the Scope and other rules of the Agreement, numerous awards of this Division and a letter by President Richardson of Carrier which is a proposal to increase certain existing rates of pay. Also it is contended that the salvaged material was retained by Carrier and some restricted work was performed after the abandonment was effective.

Respondent Carrier contends that revenue service was discontinued on this sub-division prior to the time recited in the claim and that in other similar instances the Organization has not claimed the work. Also setting out the magnitude of the work performed in the dismantling process, the need for expert skilled service and stating that the work of dismantling is the exact opposite of maintenance and is not covered by the rules of the Agreement cited by Petitioners.

We view the question presented to be governed by fundamental principles of that which was contemplated by the parties when the Scope Rule and other rules of the Agreement were agreed upon. Was it the intent that the Scope Rule have the broad application as now contended by Petitioners? We think not and for the following reasons: The purpose expressed as to work to be performed certainly relates to the maintenance of an operating railroad and not to property which has or is in the process of being abandoned. Can it be said that although the Scope rule does not recite work of dismantling of equipment of an abandoned part of the property covered by the Agreement is by implication included therein? Again we do not agree that such was the intent or within the contemplation of the parties when the rule was adopted and made a part of the agreement. To follow such a line of reasoning could easily lead to strange results, in that this abandoned property might be put to an entirely different purpose than that for which it has been used and it would be absurd to say that contractual rights continued even though there was no longer any need for maintenance work of the type contemplated when the Carrier was operating the Sub-Division in question for revenue service in railroad operations. It is true that Carrier did retain possession of salvaged material and that some restricted work was done during the abandonment period, however, the fundamental principle underlying the work which was contemplated to be performed no longer exists. Hence, without going into a discussion of awards cited by the parties which deal with varying situations, it is suffice to say that the work performed and claimed herein was not that intended or contemplated by the parties when the Agreement was entered into and cannot be implied or read into the current agreement.

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 meanng 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

Claims denied as per Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 4th day of March, 1955.