

Award No. 11138
Docket No. MW-10785

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Preston J. Moore, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

SOUTHERN RAILWAY COMPANY

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

(1) The Carrier violated the Agreement when it assigned the work of grading required in connection with a project involving the 'installation of power switches and track changes at car repair shed' (near stock pen at Norris Yard, Birmingham, Alabama) to 'McCormacks Contracting company.'

(2) Bulldozer Operators I. W. Davis, Sr. and A. J. Evans, Front End Loader Operator Curtis Galloway and Truck Driver J. L. Patrick each be allowed pay at their respective straight time rates for an equal proportionate share of the total number of man hours consumed by the contractor's forces in performing the work referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The Carrier desired and decided to effect several track changes and/or track rearrangements near the stock pen at Norris Yard which would require some grading work. In other words, the site of the eventual relocation of the tracks required certain high places to be cut down and certain low places to be filled.

The Carrier assigned all such grading work to an outside contractor (McCormacks Contracting Company). The contractor started the grading work on January 16, 1957 and completed it in approximately twenty (20) work days. The only equipment used by the contractor was one (1) bulldozer, two (2) front-end loaders, one (1) motor grader and four (4) trucks. Similar equipment is owned and operated by the Carrier.

All other work, including the work of moving the tracks from the old to the new location, was assigned to and performed by a ten-man track crew holding seniority under the scope of this Agreement.

not subdivided for purposes of discerning whether some of it could be performed by the employees. See, also Award 3891, which deals with material made in the contractor's shop and delivered to the property for installation."

In Third Division Award No. 6492, Referee Whiting, it was held:

"* * * under the rules set forth in Awards No. 5304 and 5563 and based on the evidence here presented, the work here involved must be considered as unusual or novel and not contemplated by the scope of the agreement between the parties."

The grading here involved performed at Birmingham was **not** embraced in the scope of either agreement in evidence. Furthermore, it was **not** work exclusively performed under an established practice. Then, too, special equipment of the type not owned or in possession of the railway company was necessary in order to perform the work. Moreover, the work was of great magnitude and involved a considerable undertaking. Furthermore, emergency time requirements existed, making it impossible for railway employes to have performed the work even had the Carrier not contracted it.

Aside from the fact that prior Board awards have denied claims identical in principle, several of which interpret the contracts here in evidence, all four claimants were employed on a full-time basis and worked regularly while the grading work was being performed under contract. They could not, therefore, have been in two places at the same time doing two entirely different and distinct jobs. Then, too, as pointed out, they had no contract right to perform the work.

CONCLUSION

Carrier respectfully submits that:

(a) Claim which the Brotherhood here attempts to assert is vague and indefinite and amounts to nothing more than monetary demands for no specific amounts on no specified dates.

(b) The effective Maintenance of Way Agreements were not violated as alleged, and the claim is unsupported by either of them.

(c) Prior Board awards have denied claims identical in principle, several of which have involved interpretation of the contracts here in evidence.

The claim and demand being without any basis whatever and unsupported by the plain, unambiguous language of the agreements in evidence, the Board cannot do other than make a denial award.

All relevant facts and arguments involved in the dispute have heretofore been made known to employe representatives.

Carrier, not having seen the Brotherhood's submission, reserves the right after doing so to make appropriate response thereto and submit any other evidence necessary for the protection of its interests.

OPINION OF BOARD: This dispute is between The Brotherhood of Maintenance of Way Employes and the Southern Railway Company.

The Carrier, as part of a modernization program relocated some tracks in its Norris Yard located at Birmingham, Alabama. The Carrier contracted out the grading work. All of the other work was performed by employees holding seniority under the scope of this Agreement.

The Organization has not offered evidence as to past practice on the property so the issue to be determined is if the work of grading was intended to be embraced within the scope and classification provisions of the Agreement. We do not believe this is in the nature of repair or remodeling. The moving of track to a new location is practically the same as building new track. Therefore we cannot conclude that the work involved is work embraced within the scope and classification provisions of the Agreement.

For the foregoing reasons, we believe the Agreement was not violated.

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 14th day of February 1963.