

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

GEORGIA SOUTHERN AND FLORIDA RAILWAY COMPANY

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 paving the Ashley Street crossing at Valdosta, Georgia to a general contractor whose employees hold no seniority rights under the provisions of this Agreement.

(2) Track Foreman J. W. Simpson, and Laborers Julius Oliver, Tommie Jackson, Samuel Savage, Dave Young, W. J. Gilmore, B. J. Roberson, Aaron Holmes, Floyd Goodwin and V. E. Dennis, each be allowed pay for twenty (20) hours at their respective straight time rates because of the violation referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: The position of Track Foreman (Maintenance Gang) is encompassed within the Scope of the Agreement between the parties commonly referred to as the "Foremen's Agreement," whereas the position of Laborers (Maintenance Gang) is encompassed within the Scope of the Agreement between the parties commonly referred to as the "Laborer's Agreement."

On May 24, 25 and June 1, 1956, the work of paving the Ashley Street crossing at Valdosta, Georgia was assigned to and performed by a General Contractor whose employees hold no seniority rights under the provisions of this Agreement.

The work consisted of the removal of the old crossing, of then applying and spreading an asphalt mixture and then rolling thereof with a roller and other work incidental thereto.

The work is of the nature and character usually and traditionally performed by the Carrier's Maintenance of Way forces, having performed similar work in the paving of the Patterson and River Street crossings in Valdosta, Georgia during the year 1949, using equipment provided by the Carrier.

The claimants were available, fully qualified and could have efficiently and expediently performed the above referred to work had the Carrier so desired.

Claim being without merit, unsupported by any provision contained within the four corners of the effective agreements, and having heretofore been denied in principle by prior Board decisions, the Board cannot do other than make a denial award.

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

Carrier, not having seen the Brotherhood's submission, reserves the right to make appropriate response thereto.

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier contracted for the paving of Ashley Street crossing at Valdosta, Georgia. The work was done by a general contractor on May 24, 25 and on June 1, 1956. Employees contend that this work belonged to the Maintenance of Way employes and that the Carrier ignored the seniority rights of the Claimants who should have been assigned to that work.

Employes ex parte submission refers to a similar dispute. They say:

"As information, an identical dispute is pending before this Division which is identified in your records as Docket MW-9327, involving this Brotherhood and the Southern Railroad Company, one of the Carriers parties to the subject Agreements. We respectfully request that the submissions of both parties in that dispute be, by reference, made a part of the instant docket."

We have examined Docket MW-9327. It involves the same Organization, a Carrier that is a party to an Agreement identical with the one which is before us, and the facts concerning the claim in that docket are in every respect similar with facts involved in this dispute.

In Docket MW-9327 two highway crossings were paved by a general contractor, in the same manner as it was done at the Ashley Street crossing at Valdosta, Georgia. In Docket MW-9327 the work was done in July, 1955. In the present dispute the work was done in May and June, 1956. The position of the Employees is identical in both instances. Similar contentions and arguments are presented here as they were presented in Docket MW-9327. Even Carrier's Exhibits A-1 to A-16 inclusive attached to their ex parte submission are identical in both Dockets. They are by the same affiants, bear the same dates, and are before the same notaries. These affidavits are in support of Carrier's argument that this type of work had previously been done by general contractors.

The position of the parties were fully considered by this Board and we denied the claim in Docket MW-9327 by our Award 10715 (Harwood). We have examined that Award and we can find nothing palpably wrong with it. We can find no good reason to overrule it. The principle therein enunciated was more recently sustained in Awards 11140 and 11141 (Moore). Award 11139 (Moore) cited by Employees is not applicable to this dispute because the work there performed was of a different nature and the facts are not comparable.

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 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 Carrier did not violate the Agreement.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 15th day of March, 1963.