

Award No. 13979
Docket No. MW-14010

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

P. M. Williams, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

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

1. The Carrier violated the Agreement when it assigned or otherwise permitted forces outside the scope of its Agreement with its Maintenance of Way employes to perform concrete and form work, install water mains, build certain structures, dismantle structures or other facilities, make changes in buildings and move or remove or relocate other facilities at its Decoursey Yard and vicinity near Covington, Kentucky.

2. Each employe holding seniority in the Bridge and Building Sub-department, as shown on the seniority roster revised to January 1, 1961 (copy attached to letter of claim presentation and so indicated therein), be allowed pay at the straight time rate of pay of their highest seniority classification for an equal proportionate share of the total man hours consumed by contractors' forces in performing the work referred to in part (1) of this claim, with the exception of W. C. Wilcoxson and those employes retired on disability under the Railroad Retirement Act, who remain on disability annuity during the entire time contractors' forces perform B&B work, those on sick leave for the duration of such sick leave and those deceased since the 1961 roster was issued.

3. Each furloughed B&B employe be reinstated for holiday pay, Health and Welfare benefits for himself and his dependents, for an equal amount of time worked by contractors' forces, and that each employe be allowed vacation credit for each day that contractors' forces perform work for the Louisville & Nashville Railroad Company at or near Decoursey, Kentucky.

EMPLOYES' STATEMENT OF FACTS: The facts in this case were fully and accurately set forth in the letter of claim presentation which reads:

work was properly contracted out when special skill or equipment was required. See Third Division Award 8757, Referee Arthur W. Sempliner, wherein it was held:

"The carrier was eminently fair, in that it gave its employes a large portion of the total work of remodeling which also could have been contracted out. This was discretionary, in view of the previous similar work contractd out, and the line of demarcation between employe work and contractor work was one of business judgment reserved to the carrier."

Without in any way prejudicing its position, carrier submits that that portion of Section 3 of employes' claim pertaining to Helath and Welfare benefits should be disregarded as it is not within the jurisdiction of the Railroad Adjustment Board.

In view of the circumstances as set forth in the foregoing, carrier asserts claim is without merit and should be denied.

OPINION OF BOARD: It is not disputed that Carrier contracted with construction companies certain of the work involved in the construction of the large, new freight and classification yard located near Covington, Kentucky.

The claim made by Petitioner herein is that the character of the work involved in the construction project was reserved to Bridge and Building Department employes.

The record discloses that certain Bridge and Building Department employes were in a furloughed status at the time the contracting was in progress.

Carrier's answer to the claim is that the exception contained in Rule 2(f) is applicable, therefore no violation of the agreement has occurred. Rule 2(f) provides:

"2(f) The railroad company may contract work when it does not have adequate equipment laid up and forces laid off, sufficient both in number and skill, with which the work may be done."

The record contains probative evidence of a number of definitive portions of the construction project where specific equipment was required to do the job. Additionally, we find evidence that the necessary equipment was either not owned by Carrier or not readily available to it. The facts presented also are convincing that particular job skills were required on those portions of the project not performed by Bridge and Building Department employes. In this latter vein Carrier placed in issue the ability of Claimants to perform that work; thereafter, Petitioner submitted no probative proof that Claimant could skillfully do the work described and required.

We find sufficient evidence within this record to support a determination that the exception of Rule 2(f) is applicable for Carrier did not have adequate equipment laid up and forces possessing the necessary skills laid off, with which to do the work involved. We will deny the claim.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schultz
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of November, 1965.