

Award No. 14967
Docket No. MW-15764

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Arthur W. Devine, 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 the work of grading, paving, track moving, and other related work at Athens, Alabama to the Ellard Construction Company.

(2) Machine Operators C. M. Atwell and J. D. Clement be allowed eight hours' straight-time pay at the Dragline Operator's rate and the Endloader Operator's rates respectively for each work day within the period from September 17 to October 9, 1964, both dates inclusive, and also for the work day of October 20, 1964.

(3) Mr. B. A. Franklin and Mr. E. E. Hodges each be allowed eight hours' pay at the truck driver's straight time rate for each of the work days within the period from September 17 to October 9, 1964, both dates inclusive.

EMPLOYES' STATEMENT OF FACTS: From September 17 through October 9, 1964 and on October 20, 1964, employees of the Ellard Construction Company, who hold no seniority rights under the Agreement, were assigned to perform paving work and to grade for, move, straighten and lower track near the passenger station at Athens, Alabama. In the performance of this work, the contractor's forces used equipment similar to that which the Carrier owned and had available, i.e., bullgraders, a dragline, end loaders and dump trucks.

The claimants were cut off employees on the seniority district where the subject work was performed. They were available and fully qualified to perform all of the subject work, and would have done so if the Carrier had assigned them to it.

Claim was timely and properly presented and handled at all stages of appeal, up to and including the Carrier's highest appellate officer.

and it was declined by the Director of Personnel on December 14, 1964, by the following letter:

"LOUISVILLE AND NASHVILLE RAILROAD COMPANY
Office of Director of Personnel
Louisville, Kentucky

December 14, 1964
E-201-12
E-201

Mr. W. P. Gattis, General Chairman
Brotherhood of Maintenance of Way Employes
Nashville, Tennessee

Dear Sir:

Your letter of December 8, concerning claim of C. M. Atwell, J. D. Clement, B. A. Franklin and E. E. Hodges that they be paid for the work performed by Ellard Construction Company, Athens, Alabama, between September 17 through October 9, inclusive, and October 20, 1964, while engaged in grading and paving in connection with lowering tracks near the passenger station.

In handling this matter with the Chief Engineer, we have been furnished with a copy of his letter to you dated December 3, 1964; and, in view of the circumstances as outlined therein, we see no basis for the claim, and it is, therefore, respectfully declined.

We shall, however, be glad to discuss this matter with you at our next conference if you so desire.

Yours truly,

/s/ W. S. Scholl
Director of Personnel"

The claim was then discussed in conference on February 25, 1965, at which time it was again declined, and nothing further was heard from the claim until notice was received from the Board of employes' intention to file ex parte submission.

OPINION OF BOARD: From September 17 through October 9, 1964 and on October 20, 1964, Carrier contracted with Ellard Construction Company to perform paving work and to grade for, move, straighten and lower track near the passenger station at Athens, Alabama.

The Employes protested the contractor performing this work, alleging that Claimants and equipment were available to have performed all the subject work if Carrier had so assigned them to it.

Carrier takes the position that the Agreement permits the contracting out of work, and that it has been this practice over a period of years to do so. Carrier contends that the exception contained in Rule 2 (f) is applicable in this case.

Rule 2 (f) is applicable in this case. 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 issue, as we see it, is similar to the issue that was disposed of by Awards 11085 (Boyd), 11289 (McMahon), 13979 (Williams), 14122 (Harr) and 14820 (Lynch), involving these same parties.

They were denial awards.

We can find no substantial difference between these previous cases and the instant case.

Therefore, we will deny the Claim.

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

That the parties waived oral hearing;

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee 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 30th day of November 1966.