



Award No. 15755

Docket No. MW-16310

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Wesley Miller, 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 other than B&B department employees to build extensions on water-way culverts under the main line track at Mile C-258 on March 29 and 30, 1965.

[Carrier's file E-201-5, E-201]

(2) Mr. B. R. Tallent be allowed pay for a number of hours equal to the total number of man-hours consumed by outside forces in performing the work referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: On March 29 and 30, 1965, the Carrier assigned or otherwise permitted other than Bridge and Building Department employees (contractor's employees) to perform the work of extending a culvert which had previously been placed under the main line tracks at Mile C-258. This work consisted of shifting enough of the embankment to permit the placing of the extension pipe at the proper slope so as to conform with the original culvert and fasten it thereto. The existing culvert was installed by the Carrier's B&B forces.

Claimant B. R. Tallent is the senior cut-off employee who holds seniority within the B&B Subdepartment, who was willing, fully qualified and available to have performed this work which has been traditionally and historically assigned to the B&B employees. The Carrier had sufficient and proper equipment available to perform this work.

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

The Agreement in effect between the two parties to this dispute dated May 1, 1960, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Facts.

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

November 19, 1965
E-201-5
E-201

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

Dear Sir:

Your letter of September 10, file 1-5, relative to claim that B. R. Tallent be paid for an equal amount of overtime made by the contractor's forces when such forces built an extension on the waterway culvert under the main line track on Mile C-258.

As explained to you in the conference on November 17, we do not have a piece of equipment with the capacity to perform the work which was necessary at this location. We do have a front end loader which can handle loose material but it does not have the capacity to do excavation work as was required on the job. Furthermore, there is not a qualified operator in the B&B Department on the K&A Division who can operate the front end loader.

It is still our position that there is no basis for the claim and this letter will serve to confirm our declination.

Yours truly,

/s/ W. S. Scholl
Director of Personnel

Nothing further was heard about the matter until carrier received copy of the organization's letter to you under date of June 3 that it intended to file an ex parte submission in the dispute.

There is on file with this Division a copy of the current rules agreement and it, by reference, is made a part of this submission.

OPINION OF BOARD: There are several recent Awards rendered by the Third Division which have resolved issues between these same Parties quite analogous to those presented in the present Claim, namely, 15734, 15597, 15054, 15011, and 14967 — all of which were denial decisions.

The cases cited supra are not substantially different to the case at hand, and we do not believe the respective decisions rendered in these cases were palpably erroneous.

Therefore, the instant Claim should be denied.

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. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of July 1967.