

Award No. 15763
Docket No. MW-16120

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Don Harr, 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 relining and/or placing relining material in a tunnel at or near Hazard, Kentucky to forces outside the scope of this Agreement.

[Carrier's file E-201-2 E-201]

(2) B&B Foreman J. H. Cockerham, B&B Carpenters Sidney Strong, M. Haddix, C. Creech, B&B Carpenter Helpers R. H. White, Ollie Noble, P. E. Tharpe and Seldon Creech each be allowed pay at their respective straight-time rates for an equal proportionate share of the total number of man-hours consumed by outside forces in performing the work referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: The claimants had established and held seniority in their respective ranks within the Bridge and Building Subdepartment on the Eastern Kentucky Division. Claimant J. H. Cockerham was furloughed from the foreman's rank (Rank 1) and, in order to remain in service, he was working in a lower rank (Rank 5) as a burro crane operator. All of the other claimants were furloughed and out of service.

Commencing on or about October 21, 1964, the Carrier assigned the work of relining and/or placing relining material in a tunnel located at or near Hazard, Kentucky (Eastern Kentucky Division) to the George E. Detzel Company of Cincinnati, Ohio. In addition to its regular employees (2), the contractor employed and used three (3) of the Carrier's furloughed B&B employees in the performance of the subject work.

The work consisted mainly of placing a pre-fabricated light metal liner within the tunnel and then pumping concrete of the proper mixture and consistency between the liner and the tunnel walls and ceiling, using an air compressor, a concrete mixer, a water pump and a gunite machine.

The work is of the nature and character that, since time immemorial, has been assigned to and performed by the Carrier's B&B employees.

I would like to further discuss this matter with you at our next conference and would appreciate your listing it for discussion at that time.

Yours very truly,

/s/ W. P. Gattis
W. P. Gattis
General Chairman

WPG:hs

Subsequent correspondence was relative to confirmations of the declination.

The working rules agreement between carrier and its employees represented by the Brotherhood of Maintenance of Way Employees, effective May 1, 1960, is on file with the Board, and by reference is made a part of this submission.

OPINION OF BOARD: Carrier admittedly contracted out work in connection with the repairing and relining of a tunnel known as the "Hazard Tunnel."

The claim made by the Organization is that the work involved was reserved to the Bridge and Building Department Employees.

The issue of Carriers' contracting work under the provisions of Rule 2(f) of the Agreement has been before this Board on numerous occasions. Rule 2(f) reads:

"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 previous cases before this Board has resulted in denial awards. Among these is Award 14122 by the present Referee. See also Awards 11085, 11289, 13979, 14820, 14967, 15011, 15054, 15597 and 15734.

There is no substantial differences between the previous cases and the one before us. 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 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 27th day of July 1967.

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