



Award No. 16028
Docket No. MW-16378

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

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

(1) The Carrier violated the Agreement and established practices thereunder when it assigned the work of cleaning rubbish from Track 280 at Sumter, Alabama on September 18 and 24, 1965 to forces outside the scope of its Agreement with its Maintenance of Way employees. (Carrier's file E-304-12.)

(2) Because of the violation which occurred on Saturday, September 18, 1965, Foreman J. C. Rutland, Laborers J. Ross, O. L. Deramus, R. B. Robinson, A. Benson, W. Coats, D. Johnson, S. Saxten and F. E. Hood each be allowed eight (8) hours' pay at their respective time and one-half rates.

(3) Because of the violation which occurred on Friday, September 24, 1965, Foreman J. C. Rutland, Laborers J. Ross, O. L. Deramus, R. B. Robinson, A. Benson, W. Coats and D. Johnson each be allowed eight (8) hours' pay at their respective straight-time rates.

EMPLOYEES' STATEMENT OF FACTS: The claimants are regularly employed as section foreman and section laborers respectively, and are currently assigned to Section No. 51 at Bessemer, Alabama, with a work week of Monday through Friday (Saturdays and Sundays are designated rest days).

On Saturday, September 18 and Friday, September 24, 1965 the work of cleaning debris from Track 280 at Sumpter, Alabama was assigned to and performed by employees of the P. E. Thomas Construction Company. Track 280 is within the jurisdiction of Section No. 51 and, with the exception of this instance, work of this character has been exclusively assigned to and performed by the employees assigned thereto.

The work here involved consisted of loading the debris (slate that had been removed from coal shipments by Taylor and Sons Coal Company) onto a truck and hauling it away. The assignment of this work to outside forces was by the Carrier who also paid all costs thereof. Taylor and Sons Coal Company had no responsibility to either have this work performed or to assume the cost thereof.

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.

CARRIER'S STATEMENT OF FACTS: On Saturday, September 18, 1965, and Friday, September 24, 1965, employees of the R. E. Thomas Construction Company cleaned rubbish from Track No. 280 at Sumter, Alabama. The track is leased to Taylor & Son Coal Company who load coal at that point.

The rubbish consisted of slate which had been removed from the coal shipped by the coal company, and a small amount of other debris cleaned from the cars spotted at that point for loading.

Employees claim that the agreement was violated when the contractor's forces cleaned the track, and filed a claim. Carrier did not agree that there had been any agreement violation and consequently the claim was declined.

The handling of the claim is indicated by Carrier's Exhibits AA through II.

(Exhibits not reproduced.)

OPINION OF BOARD: The claim alleges a violation of the Agreement because on the two dates involved the Carrier assigned the cleaning of rubbish from Track No. 280 at Sumter, Alabama, to contractor forces outside the scope of the Agreement.

Rule 2 (f) of the Agreement sets forth the conditions under which the Carrier may contract work and numerous disputes have been before this Board involving the application of that rule. In the present case, however, the Carrier does not rely upon Rule 2 (f), but contends that the type of work in question is not work that is reserved to Maintenance of Way employees. In the handling of the dispute on the property the General Chairman cited numerous specific instances where Maintenance of Way employees were used to perform such work, which was not denied or disputed by the Carrier. The Carrier has not, in our opinion, offset the showing of the Employees that the work here complained of has been considered as Maintenance of Way work on this property. The Board agrees with the observation of the Organization that the work here complained of is clearly distinguishable from the commonly accepted version of garbage disposal, referred to by the Carrier.

Based on the record as submitted, we sustain Parts (1) and (2) and deny Part (3) of the claim. This Award is not to be construed or cited as a precedent.

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 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 violated.

AWARD

Claim sustained to the extent shown in Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of December 1967.