

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John J. McGovern, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
CENTRAL OF GEORGIA RAILWAY COMPANY**

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

(1) The Carrier violated the effective agreement when, on October 26, 27, 28, 29, 30, November 4, 5, 6, 9, 10, 11, 12 and 13, 1964 it let to contract work covered by the agreement which consumed 1,014½ man hours and as a result thereof:

(2) Track Foreman D. T. Matthews and furloughed Track Laborers W. Dozier, J. Harrison, F. Harris, R. Johnson, J. H. Barnett and L. Holston each be paid at his respective straight-time rate of pay for an equal proportionate share of the total man hours account of the violation referred to in Part 1. (Carrier's file MW-3155.)"

EMPLOYES' STATEMENT OF FACTS: Each of the claimants has established and holds seniority in his respective class on the Columbus Division. However, as the result of force reduction, all of them, except Claimant D. T. Matthews, were furloughed during the period here involved.

During the period from October 26, 1964 through November 13, 1964, the Carrier, without benefit of prior notice to and/or conference and agreement with the Organization, assigned or otherwise permitted outside forces to perform certain Track Sub-department work on the Columbus Division. Said work was clearly and accurately described within the letter of claim presentation, as follows:

"On Monday, October 26, 1964, nine employes of H. R. Free Paving Company of Atlanta, Georgia worked from 6:00 A. M. to 6:30 P. M. paving crossings at mile posts 362.6 and 362.7 and timbering and paving crossing at mile post 362.9, for a total of 108 man hours.

On Tuesday, October 27, 1964, nine employes of H. R. Free Paving Company of Atlanta, Georgia worked from 6:00 A. M. to 5:30 P. M. paving and timbering crossings at mile posts 361.1 and 360.3 and putting in pipe line at mile post 361.9, for a total of 99 man hours.

claim letter of December 11, 1964, to Division Engineer Waldrop, are without any basis of fact. The argument shown on Page 4 of your letter has already been decided against you in Third Division Awards 12244 (Dorsey); 12415 (Coburn); 13798 (Williams); and others — each involving the same parties and same agreement.

Each of your baseless self-serving allegations in each of your letters are flatly denied and rejected by the Carrier, and the claim remains declined in its entirety as per my full and final decision dated December 2, 1965."

The next communication of record is a further letter from Director of Personnel L. G. Tolleson of Carrier to General Chairman Padgett of the Brotherhood, dated January 20, 1966, which is reproduced as follows:

"Referring further to my letter of December 2, 1965, concerning your file 31-35-183, claim for and in behalf of Track Foreman D. T. Mathews and Laborers Dozier, Harrison, Harris, Johnson, Barnett and Holston, Columbus Division, for 1,014½ man hours which you allege were consumed by contractors in performing certain work on October 26, 1964, and certain other dates in October and November 1964.

In addition to the 12 affidavits sent you with my letter of December 31, 1965, I now enclose photo copies of affidavits signed by Mr. L. E. Bowers and by Mr. K. L. James, which are self-explanatory.

The claim remains declined as per my letter to you of December 2, 1965."

The next letter of record is the one written on August 31, 1966, by Mr. H. C. Crotty, President of the Brotherhood, to Executive Secretary S. H. Schulty of the Third Division, appealing the baseless claim to your Board.

It is a fact that to this day the Brotherhood has failed to cite any rule, interpretation or practice that gives them what they are here demanding. The Brotherhood knows they do not have rights to the work claimed, much less the exclusive rights to such work. It is a fact that the claim is unsupported by either the effective rules agreement, interpretations or historical practice on this Carrier.

The effective agreement between the employees represented by the Brotherhood, and this Carrier, is dated September 1, 1949, as amended, and is on file with your Board. The agreement, by reference, is made part and parcel of this submission.

(Exhibits not reproduced.)

OPINION OF BOARD: Petitioner alleges that Carrier on certain specified dates violated the effective Agreement when it engaged the services of an outside, independent contractor to do work which properly comes within the purview of the Scope Rule.

The issue presented in this case is not new. It has been before this Board on a number of occasions. The Scope Rule involved is general in nature, does

not define the work to be performed by the employees listed, nor does it contain any job descriptions. Confronted with such a general Scope Rule, it is axiomatic that not only does the Petitioner have the burden of proving by a preponderance of evidence that the work involved has traditionally and customarily been performed by them, but also that it constitutes work which they have performed to the exclusion of others, including outside contractors. The evidence before us does not sustain Petitioner's position. 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 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 1st day of March 1968.