

**Award No. 16507
Docket No. MW-17086**

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

Arnold Zack, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

LOUISVILLE & 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 building up manganese frogs to the Kilby Company.
- (2) Electric Welder M. Boling and Electric Welder Helper J. C. King each be allowed, in addition to payments received, an amount equal to the straight time rate of their respective positions from July 1, 1966 until the violation referred to above is discontinued.

EMPLOYES' STATEMENT OF FACTS: Beginning on or about July 1, 1966, the Carrier assigned the work of repairing or rebuilding manganese frogs by the welding process to the Kilby Company, whose employees hold no seniority rights under the Agreement. The manganese frogs are removed from the track by maintenance of way employees and are subsequently shipped to the Kilby Company. After the frogs are repaired or rebuilt, they are returned to the Carrier and reinstalled in the track by maintenance of way employees.

The claimants have established and hold seniority rights in their respective classes in the Welding Subdepartment. They are fully qualified and properly equipped to perform all work of the character here involved and have frequently built up manganese steel frogs of both the solid and rail bound types, either while they are installed in the track or after they have been removed therefrom. In fact, many of the manganese frogs repaired or rebuilt by the Kilby Company proved to have defective welding after reinstalled in the track and it was necessary for the Carrier's welding forces to replace such defective welds and to bring the rail surface to a proper plane.

Claim was timely and properly presented and handled by the Employes 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: In 1966, Carrier began the practice of removing the main line spring frogs which had become worn, and replacing them with R. B. M. frogs. There was great demand for such frogs and orders were at times delayed as much as six months before they could be filled. When the frogs were removed, the damaged ones were sent to Carrier's Stores Department at South Louisville, and a large number had accumulated. After an examination, it was considered that the frogs were worn to the extent that normal repairs by Carrier's forces would not restore them to usable condition. They had, therefore, been considered as scrap until the Kilby Company advised that it was properly equipped to restore the frogs to usable condition. They were, therefore, sent to the Kilby Company where they were completely rebuilt.

Employes alleged that the agreement had been violated and on August 30, 1966, the General Chairman filed a claim with Mr. M. A. McGee, Division Engineer, Louisville Division, in favor of Electric Welder M. Bolling and his helper, J. C. King, for 60 days retroactive to that date and continuing into the future on account of Kilby rebuilding track frogs.

Mr. McGee advised the General Chairman on September 7, 1966, that the claim had been improperly filed with him, as such work did not come under his jurisdiction, and the claim was declined. The scrapped frogs had been gathered from all over the system and sent to the Stores Department. Mr. McGee has jurisdiction only on the Louisville Division and none at the Stores Department.

Correspondence exchanged in connection with the claim is shown by the attached exhibits, AA through GG. In Carrier's exhibit FF reference was made to Carrier's letter of November 7th. This should have been October 28.

Copy of the current working rules agreement is on file with the Third Division and by reference is made a part of this submission.

(Exhibits not reproduced.)

OPINION OF BOARD: On or about July 1, 1966 Carrier began accumulating in its Stores Department worn manganese frogs which had been removed from tracks on line of road. These were turned over to the Kilby Company, an outside contractor for rebuilding, after which they were returned to track forces for reinstallation in the tracks.

Organization filed the instant claim, alleging that all this work could have, and should have, been performed by Carrier's own employes. It relies on Rule 38(b) which entitles Carrier's welders to perform all work classified as welders work, asserting that the disputed work could have been done on line of road or in maintenance of way shops, and that some of the outside repair work had, in fact, to be redone by its welders. It further cites prior Awards of this Board which have held that the primacy of Rule 38(b) as a special rule precludes the Carrier's general right to subcontract this work under Rule 2(f).

Carrier replies that Rule 38(b) does not guarantee Organization all welding, but is specifically limited in its application only to welding that can be performed on line of road or in maintenance of way shops. It asserts that the disputed work could not have been done except at Kilby's location and upon the special facilities and equipment it possessed. Carrier distinguishes the prior

cases of rail welding ruled on by this Board by pointing out that in both of those cases the work could have been done on the property. Finally Carrier argues that Rule 2(f) specifically authorizes contracting of work when as in this case Carrier has inadequate equipment and personnel on layoff status.

There is no dispute over the fact that Carrier's welders have over the years done welding work to raising the levels of frogs both on line of road and in maintenance of way shops. Nor is there dispute over the fact that at some point in their use frogs become sufficiently worn as to be judged beyond repair. For this latter reason Carrier had accumulated a number of frogs in its Stores Department which it judged to be beyond repair. At this juncture it was informed that the Kilby Company had equipment which among other things could heat the entire frog and by welding rebuild the frog to usefulness. Accordingly it contracted to have this work done by the Kilby Company. We are convinced by the evidence that the work done by the Kilby Company could not have been performed on line of road or in maintenance of way shops. Organization has clearly shown the wealth of its skill in doing welding, and even in doing some repair work to frogs after their return. But it has not succeeded in proving that with the Carrier's portable or shop equipment that it had done or could have done the total frog reheating or the substantial rebuilding of virtually abandoned frogs that was accomplished by the Kilby Company. Accordingly we find that Carrier acted within its authority under Rule 38(b) in contracting out this work.

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 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 by the Carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 25th day of July 1968.

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