

Award No. 16630
Docket No. MW-17332

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, 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 installing a switch in the Phelps Dodge Spur Track to forces outside the scope of the Agreement. (System File E-201-18/1-12.)

(2) The Carrier further violated the Agreement when it assigned the work of unloading five (5) cars of slag at the Phelps Dodge Spur Track to forces outside the scope of the Agreement.

(3) Track Foreman B. L. Raines, Assistant Foreman Jack White and Track Laborers James Taylor, B. Barnett, E. Payne, L. C. Darden, L. Gardner, M. Williams, A. R. Johnson and B. T. Cager each be allowed twenty-four (24) hours' pay at their respective straight time rates of pay because of the violation referred to in Part (1) of this claim and, in addition thereto

(4) Each of the above named claimants be allowed pay at their respective straight time rates of pay for the same number of hours worked by outside forces in performing the work referred to in Part (2) of this claim.

EMPLOYES' STATEMENT OF FACTS: On November 4, 7 and 8, 1966, the work of installing a switch on the Phelps Dodge Spur, 800 feet south of the main line, south of Hopkinsville, Kentucky, was performed by employees of the Carter Construction Company, none of whom hold any seniority rights under the Agreement. On December 5, 1966, the work of unloading five cars of slag at the Phelps Dodge Spur was performed by employees of the aforementioned company.

The contractor's forces consisted of one foreman and nine laborers. The Carrier furnished and delivered all of the necessary materials used in the performance of said work and provided all of the necessary equipment (trucks, a locomotive and five cars), and the operators thereof.

In view of the circumstances involved, we see no basis for the claim and it is therefore respectfully declined.

Yours truly,

/s/ W. S. Scholl
Dir. of Personnel"

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

February 17, 1967
E-201-18

Mr. Jack Benson, General Chairman
Brotherhood of Maintenance of Way Employees
Nashville, Tennessee

Dear Sir:

In our conference on February 15, 1967, we discussed your claim in favor of Mr. B. L. Raines and others, on account of the Carter Construction Company installing a switch in the Phelps Dodge Spur Track, Hopkinsville, Kentucky, November 4 through the 8th, a total of three days, and your claim for December 6 for the same employees, on account of Carter Construction Company unloading five cars of slag.

As explained to you in our conference on February 15, it is still our position that since there are no furloughed employees on the Evansville Division, all the claimants were working full time in the ranks claimed, that there is no basis for the claim and it must, therefore, stand as declined.

Yours truly,

/s/ W. S. Scholl
Dir. of Personnel"

Copy of the effective rules agreement between Carrier and its maintenance of way employees is on file with the Board and by reference is made a part of this submission.

OPINION OF BOARD: The issue in this case is essentially the same as that decided today in Award 16629, between the same parties. We will decide it in the same way.

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 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 11th day of October 1968.