

## NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

David H. Brown, 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 installing a roof on the D. F. Building at South Louisville Shops yard to forces outside the scope of its agreement with its Maintenance of Way employees. (System File No. 1-9/E-201-9)

(2) Messrs. J. I. Smith, T. W. Holman, F. D. Stofer, J. C. Murrell, R. Short, E. E. Moore, W. E. Rose and E. M. Coyle 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.

EMPLOYEES' STATEMENT OF FACTS: On January 16, 1967, the Carrier assigned the work of installing a new roof on the D. F. Building at the South Louisville Shop Yard to Contractor Ray Nolan. The contractor's forces who performed the work in this instance do not hold any seniority within the scope of the Carrier's agreement with its Maintenance of Way Employees.

The claimants, Foreman J. I. Smith, Carpenters T. W. Holman, F. D. Stofer, J. C. Murrell, R. Short, Carpenter Helpers E. E. Moore, W. E. Ross and E. M. Coyle, are all regularly assigned within their respective classes and have customarily and traditionally been assigned to perform work of the character here involved. In this instance, the claimants were available, qualified, and would have willingly performed this work if the Carrier had so desired.

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:** Carrier found it necessary to install a roof on the D. F. Building (old dry kiln building, which is to be used to house equipment). All Bridge and Building forces were working at least 40 hours on other projects, and since there were no forces laid off, sufficient both in number and skill, who could perform the work, a contractor was employed as provided for by the agreement.

It was claimed that carrier did not have a right to contract the work and claim was filed in favor of the claimants, all of whom were working. The carrier did not see any justification for the claim and it was, therefore, declined. Correspondence exchanged in connection with the claim is shown by the attached exhibits.

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

(Exhibits not reproduced.)

**OPINION OF BOARD:** This dispute involves the same parties and essentially the same facts as prevailed in our Award No. 16733, wherein we denied the claim on the basis that Carrier had a good defense under Rule 2 (f) of the Agreement. For the reasons more fully set forth in such award we will deny the instant claim.

**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

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 20th day of February 1969.

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