



Award No. 17237

Docket No. MW-17862

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

Paul C. Dugan, 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 Agreement was violated when the work of installing a switch and lining and surfacing the track leading to the welding plant in Radnor Yards, Nashville, Tennessee, was assigned to forces outside the scope of the Agreement. (System file: E-201-11/1-25)
- (2) Section Foreman B. C. Dearry, Assistant Section Foreman J. B. Willis and Track Laborers W. F. Davis, Richard Rushing, L. T. Newcome, Roy Whitlow, C. L. Lanier, W. R. Johnson, L. A. Marable, W. H. Pratt, K. Ward and E. W. Cobb each be allowed pay at his respective pro rata rate of pay for an equal proportionate share of the total number of man hours expended by outside forces in the performance of the work referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: The Carrier assigned the work of installing a switch, surfacing and lining track within its Radnor Yards at Nashville, Tennessee, to the Tennessee Railroad Construction Company. The contractor's forces, who hold no seniority within this Agreement, started this work on September 18, 1967, at which time there were five (5) gangs working within the Nashville Terminals Seniority District and approximately forty (40) furloughed employees on the Nashville Seniority District.

The Employees contended that this was work of a character customarily and traditionally assigned to and performed by the Carrier's track department forces and that the assignment thereof to outside forces was in violation of Rule 1 which reads:

"Subject to the exceptions in Rule 2, the rules contained herein shall govern the hours of service, working conditions, and rates of pay for all employees in any and all subdepartments of the Maintenance of Way and Structures Department, represented by the Brotherhood of Maintenance of Way Employees, and such employees shall perform all work in the maintenance of way and structures department."

who bids for it. An employe permanently transferred under (a) and (b) shall take such seniority as he has with him.

10(c) A transfer of an employe from one subdepartment to another may be made under similar conditions as in (a). Permanent transfer requires the concurrence of the employes concerned. In temporary transfer (not to exceed three months) the employe establishes no seniority in the subdepartment to which transferred, and retains his seniority in the subdepartment from which transferred. In permanent transfer, he shall give up seniority in the subdepartment from which transferred, and shall establish seniority in his new subdepartment in accordance with Rule 6, from the first day worked in such new subdepartment."

SECTION 1 of ARTICLE III

"The organizations recognize the right of the carriers to make technological, operational and organizational changes, and in consideration of the protective benefits provided by this Agreement the carrier shall have the right to transfer work and/or transfer employees throughout the system which do not require the crossing of craft lines. The organizations signatory hereto shall enter into such implementing agreements with the carrier as may be necessary to provide for the transfer and use of employees and the allocation or rearrangement of forces made necessary by the contemplated change. One of the purposes of such implementing agreements shall be to provide a force adequate to meet the carrier's requirements."

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 and made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: Carrier contracted with the Tennessee Railroad Construction Company to install turnouts and line track, on the west side of Radnor Freight House, leading to the Welding Plant at Radnor, Tennessee. Radnor is in the Nashville, Tennessee Terminals, and since there were no furloughed employes in the Terminals, sufficient both in number and skill, to do the work the work was contracted in accordance with the provisions of Rule 2(f).

Employes alleged that the current working rules agreement (on file with this Division and by reference made a part of this submission), was violated, and filed claim in favor of Foreman B. C. Deary, Assistant Foreman J. B. Willis, and ten laborers, all of whom are Nashville Terminals employes and were working at the time. Carrier saw no basis for the claim and it was, therefore, declined. Correspondence exchanged in connection with the claim is shown by the attached Carrier's Exhibits "A" through "H".

(Exhibits not reproduced)

OPINION OF BOARD: The Organization objects in this instance to

Carrier having contracted out the work of installing a switch, surfacing and lining track within its Radnor Yards at Nashville, Tennessee, to the Tennessee Railroad construction Co., claiming that the work properly belongs to the Maintenance of Way Employees.

The Organization's position is that the work in question is given to Claimants under the Scope Rule of Agreement; that before the exception to

Rule 2 (f) may be applied, both conditions set forth in said rule must exist; that under Rule 10 (a) of the Agreement, the Carrier could have transferred furloughed employees from another seniority district to perform the work here in question; that Rules 2(f) and 10(a) have to be read together and therefore Carrier did have sufficient forces in number and skill to perform said work herein.

Carrier's defense to this claim are that it did not have forces laid off in the Nashville Terminals and therefore not having forces laid off to do the work, it had the right under Rule 2(f) to employ an outside contractor to do said work; that it is not required that there be no furloughed employees on the entire system before Rule 2 (f) is applicable herein.

Award No. 16990, involving the same parties to this dispute, considered the contentions raised by both parties herein, and concluded:

"We believe that the Carrier is correct in its position. Awards Nos. 11085 and 15734, in which Robert Boyd and George Ives were the Referees, respectively, held that Rule 4 was applicable and did not require the Carrier to transfer furloughed employees in one seniority district to another seniority district when work was contracted out. Although it is true that neither Award referred to Rule 10, that Rule in its present form was in existence at the time the dispute arose which led to Award No. 15734. Furthermore, it is clear from the terms of Rule 10 that it affords the Carrier the right to transfer employees from one seniority district to another under given facts and circumstances, but does not place an obligation on the Carrier to do so.

"The same is true of Section 1 of Article III of the National Agreement dated February 7, 1965 upon which the Organization relies. Even if that Agreement were applicable to this dispute, a question which we need not and do not here decide, it would avail nothing to the Organization, for it, like Rule 10, permits, but does not require, the Carrier to transfer employees from one seniority district to another under given situations."

Inasmuch as we feel Award No. 16990 is not palpably erroneous, and finding it controlling in this dispute, we are compelled to deny the 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 here; and

That the Agreement was not violated.

A W A R D

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 June 1969.