



Award No. 17238

Docket No. MW-17863

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(SUPPLEMENTAL)**

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
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 constructing a spur track to the Welding Plant at Radnor Yards, Nashville, Tennessee, to outside forces. (System File 1-25/E-201-11)

(2) Foreman B. C. Dearry, Assistant Foreman J. B. Willis and 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 their respective straight time rates for an equal proportionate share of the total number of man-hours consumed by the outside forces in performing the work referred to in Part (1) of this claim."

EMPLOYEES' STATEMENT OF FACTS: The Carrier contracted with the Tennessee Railroad Construction Company to perform the work of installing a spur track to the welding plant at Radnor Yards, Nashville, Tennessee. The Nashville Terminals, together with the Nashville Division, are under the jurisdiction of Division Engineer J. W. Leinard.

The contractor's forces do not hold any seniority within the agreement controlling here. The work was started by the contractor's forces on August 21, 1967, at which time there were approximately forty (40) track department employees furloughed on the Nashville Division. The work in question is of the character which has been traditionally assigned to and performed by the Carrier's track subdepartment employees.

The qualifications of the claimants to perform work of this character has not been questioned by the Carrier. The availability of equipment has not been questioned. Nor has the Carrier questioned the sufficiency of forces laid off in this case. The Carrier's only defense has been that there were no employees cut off in the Nashville Terminals, but conceding that there were at least 40 employees laid off on the Nashville Division.

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 contracted with the Darrell Willis Construction Company of Nashville, Tennessee, to construct a spur track leading to the Welding Plant at Nashville. The Welding Plant is in the Nashville Terminal Seniority District. Carrier did not have forces laid off in the Nashville Terminal to do the work, so the work was contracted in accordance with Rule 2 (f) of the schedule agreement of May 1, 1960.

Employes claimed that such contracting of work violated the agreement (which is on file with your Division and by reference is made a part of this submission) and filed claim as shown in their letter to you under date of July 18, 1968. Carrier saw no basis for the claim and it was declined. Correspondence exchanged in connection with the claim is shown by the attached Exhibits "A" through "F."

(Exhibits not reproduced)

OPINION OF BOARD: The issue herein is whether or not Carrier violated the Agreement when it contracted out the work of constructing a spur track at Nashville, Tennessee to outside forces, in this instance, the Darrell Willis Construction Company of Nashville, Tennessee.

The facts and issues in this dispute are similar to the facts and issues in Docket No. MW-17862, Award 17237, and for the reasons stated in said Award, we are compelled to deny these claims.

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.

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.

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