NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 19640
THIRD DIVISION Docket Number MW-19519

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Southern Pacific Transportation Company (Pacific Lines)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when, without prior notice to the General Chairman as required by Article IV of the May 17, 1968 National Agreement, it assigned the work of constructing a pedestrian overpass at Guadalupe, California to outside forces (System File MofW 152-729).

(2) B&B Foreman Delbert Battel, Carpenters Richard Stanuseich, Gussie Duran, Pablo Munoz, Gilbert Luna and Helper John Borghini be allowed pay at their respective straight time rates for an equal proportionate share of the total number of man hours expended by outside forces in the performance of the work referred to within Part (1) of this claim.

(3) The Carrier shall also pay the claimants six percent (6%) interest per annum on the monetary allowances accruing from the initial claim date until paid.

OPINION OF BOARD: The Organization contends that Carrier violated Article IV of the May 17, 1968 National Agreement by failing to give the notice as provided therein to the General Chairman prior to contracting out the work of constructing a pedestrian overpass at Guadalupe, California. Claimants were employed in Carrier's B&B sub-department and were qualified to perform the work in question. The work was contracted for on October 10, 1969 and was completed March 13, 1970.

Carrier claimed that the overpass was constructed pursuant to an agreement with the City of Guadalupe and in accordance with a decision of the California Public Utilities Commission. Carrier constructed the overpass, with City approval of plans and specifications, as a donation. When the work was completed the overpass was owned and maintained by the City. Petitioner does not challenge these facts.

Carrier, among other defenses, raises the issue that this claim involves construction of a public walk on a public street and that construction work on property not used in the operation of the railroad itself is not within the scope of the Maintenance of Way Agreement. The Organization argues that the structure was used in the operation of the railroad just as all highway crossings are used in the operation of the railroad. It further contends that the overpass was constructed on the Carrier's property and for the Carrier's use in providing a safe means by which pedestrians could cross the tracks. In support of its position Petitioner cites Award 19440 which deals with improvements to Carrier's property (another Carrier) as

part of an improvement program initiated by the city. That case can clearly be distinguished since it relates only to work on railroad property (installing curbs, gutters, walks and driveways) for the benefit of that Carrier, in its operations.

The matter before us is whether work for the city over railroad property, completed by Carrier as a donation should be considered within the scope of the Agreement, for purposes of applying Article IV. We find that the overpass was not built for the use of the railroad in its operations.

In Award 4793 we said:

> ". . .where a carrier owns property used not in the operation of maintenance of its railroad, but for other and separate purposes, such property is outside the purview of the Agreement."

The same reasoning was followed in a series of cases, many involving the same parties herein: Awards 9602. 10080, 10722, 10986, 11462, 14019, 19253 and others. We see no reason to depart from the doctrine enunciated in the Awards cited. Since the overpass was not used in the operation or maintenance of the railroad, we must conclude that its construction was not work within the scope of the Agreement

Article IV of the May 17, 1968 Agreement requires notice in the event Carrier "plans to contract out work within the scope of the applicable schedule agreement". In view of our conclusions above, no notice had to be served and therefore there was no violation of the Agreement.

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.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Executive Secretary

Dated at Chicago, Illinois, this 27th day of February 1973.