

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **19994**
Docket Number MU-19890

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**
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(The Atchison, Topeka and **Santa Fe** Railway Company -
(Eastern Lines

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

(1) The Carrier violated the Agreement when it used outside forces to dismantle tracks and bridges between Florence and Marion and to load the salvaged material for rail shipment for the Carrier to use for track **and bridge** repairs at other points (System File 138-128-93).

(2) The Carrier also violated Article **IV** of the National Agreement of **May 17, 1968** when it failed to give advance notice to General chairman Tressler of its intention to contract the work described in (1) above.

(3) Each employee named in **Attachment 'A'** to our letter of **claim** presentation (11-17-78) be allowed pay at his respective straight-time rate, for **an** equal proportionate share of the **total number** of man-hours expended by outside forces in dismantling tracks between M.P. **0** and H.P. 10 between Florence and **Marion**.

(4) Each employee named in Attachment **'B'** to our letter of **claim** presentation (**11-17-70**) be allowed pay at his respective straight-time rate for **an** equal proportionate share of the total number of man-hours expended by outside forces in dismantling the bridges between H.P. 0 end M.P. 10 between Florence and Marion.

(5) Each employee **named** in Attachment **'C'** to our letter of claim presentation be **allowed** pay at his respective straight time rate for an equal proportionate share of the total number of man-hours expended by outside forces in operating three (3) bulldozers, one (1) motor grader and two (2) hi-loaders in connection with the work described in Part (1) above."

OPINION OF BOARD: In March of 1969 Carrier was granted the right to abandon a portion of its operations, from Florence to Marion, Kansas (9.1 miles) by the I.C.C. Rails were removed and barricades were installed on both ends of the remaining trackage on September 2, 1970 by **employees** in the Carrier's Maintenance of Way Department. On September 20, 1970 an outside contractor began work to dismantle the abandoned track and all other structures on the stretch of abandoned line, disposing of much of the material **and** delivering certain **salvagable** material (such as rails) to Carrier. After the project was completed, on November 17, 1970 the Organization submitted its Claim.

Petitioner asserts that Carrier violated the Agreement in the **sub-contracting of** the work, particularly the Scope Rule and Article IV of the 1968 National Agreement. Article IV (which is Appendix 11 of the current Agreement) states in pertinent part:

"In the event a carrier plans to contract out work within the scope of the applicable schedule Agreement, the carrier shall notify the General Chairman of the Organization involved in writing as far in advance of the date of the contracting transaction as it practicable and in any event not less than 15 days prior thereto."

Admittedly Carrier did not file an Article IV notice. Additionally, the Organization states that its members, covered employees, were capable of carrying out the work in question and in fact had done so on a prior occasion. **This** is not denied by Carrier.

Carrier first argues that "any rights to maintenance of way **work** which employees subject to the terms of the Foreman's and Laborer's Agreement might have are limited to the maintenance of way work which is necessary to be performed on those portions of the Carrier's tracks or structures which are in actual operation, and do not extend to those portions of the Carrier's railroad which have been abandoned and are no longer a part of the Carrier's operations". The Organization's rejoinder is that Carrier is responsible for any and all work performed on its property; it controlled, assigned and paid for the work; and most significantly, Carrier retained ownership of the property and of the salvaged materials. Petitioner concludes that Carrier had an obligation "to assign such work to employees who had a contractual right to perform it."

Since Article IV relates to "**work** within the scope of the applicable schedule agreement", the principle issue herein is whether the work of dismantling the abandoned line falls within the scope of the Agreement. We have held in a long line of awards that work on facilities owned by Carrier, but used for purposes other than the operation or maintenance of the railroad, do not come under the scope rule of the agreement (Awards 19639, 19253, 9602, 4783 and others). With respect to abandoned facilities we have ruled similarly. For example, in Award 12918 we said:

"Since the Agreements pertain to work of carrying on Carrier's business as a **common** carrier, we must conclude that the work **of** dismantling and removing completely the abandoned property does not **fall** within the contemplation of the parties. This work cannot be considered maintenance, repair or construction."

We are not persuaded by Petitioner's argument with respect to the continued ownership by Carrier of the salvaged rails and other material. The critical question is not the continued ownership of the salvaged rails and real property, but the purpose for which the work was intended; **was** the work performed related to the operation and/or maintenance of the railroad or not. (Award **No.** 12 of S.B.A. No. 570) We think not. We must conclude that work on abandoned facilities, even though Carrier retains ownership of the property, is not work contemplated by the parties to the Agreement and such work **is** not within the scope of the **applicable** schedule 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 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.

A W A R D

Claim denied.

NATIONAL RAILROAD **ADJUSTMENT** BOARD
By Order of Third Division

ATTEST: *A. W. Paulsen*
Executive Secretary

Dated at Chicago, Illinois, this **12th** day of **October 1973**.