

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21045
Docket Number MW-21000

William M Edgett, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**
(
(Kansas City Terminal Railway 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 dismantling and **removing elevators** at the Union Station track level to outside forces (System File **MW-6.73-22/KCT-21**).

(2) Maintainer Foremen **J. W. Barber, N. L. Gray, T. L. Frank, G. H. Kruschek** and the 18 Union Station Maintainers, identified by name **within** our letter of **claim** presentation (**6-29-73**) 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) **above**.

OPINION OF BOARD: Carrier, on May **18**, 1973, advised the **Organization** that it **was** going to enter into a Lease and Sale Agreement with the **Allright Parking Company** for lease and sale of certain property. The Agreement provided for sale of train sheds and escalators. It further provided that Contractor would **demolish** them, disposing of salvage and debris. Other provisions of the Agreement were that **Allright** would lease and pave a **certain area**. The paving, **surface** drainage, lighting. and the enclosing and **filling** of elevator shafts to the sub-basement all to be done by the parking company.

The record **shows** that a bona fide Lease and Sale Agreement was entered into by Carrier with the **Allright Parking Company**. In conformance with that Agreement, **Allright demolished** elevator8 and removed the scrap. Its performance of that **work** did not contravene any **provision** of Carrier's Agreement with the **Organization**. The Board has rather consistently held that a Carrier's Agreement with its **employees** did not prevent it from selling property and that once a sale of the property has taken place the rights of **employees** to perform certain work are at an end. That result **necessarily follows** because Carrier has contracted with the Organization to have **employees** represented by it **perform** certain work for Carrier **in** the operation of the railroad. After **property** is sold to another corporation, for mn-railroad purposes, **Carrier's** right to control the work, and the **employees'** right to perform it is abridged. The parties have **discussed** other points and contentions in their handling of the case, but It **is** unnecessary to deal with them because the case turns on the point that a lease and sale of the property had

occurred. The work of dismantling the elevators **was** not performed for Carrier, or in furtherance of **Carrier's operations, but was performed by** the **purchaser-lessee** pursuant to **the** agreement providing that it would lease **and** convert a certain area into **parking** apace. **This is not a case in** which Carrier **has** had outside forces perform work which is **reserved** to the employees by the schedule. Accordingly, the claim will be denied.

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 thia Division of the Adjustment **Board** has jurisdiction over the **dispute** involved herein; **and**

That the Agreement was mt Violated.

A W A R D

Claim denied.

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

ATTEST:

A.W. Pauls
Executive Secretary

Dated at Chicago, **Illinois**, this 29th day of April 1976.