NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 21609
THIRD DIVISION Docket Number MW-20940

Lloyd H. Bailer, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(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 cutting and dismantling train sheds at Union Station to outside forces. (System File MW-7.73.22/KCT File 19).

(2) Each of the claimants (identified below by name and classification) 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.

NAME	CLASSIFICATION
J. Dixon	B&B Foreman
M. Rahija	" "
W. A. McGhee	" "
C. Carpenter	Welder
H. Rice	"
W. Knight	"
J. Arzola	Assistant Welder
T. Gonzales	" "
C. Owens	Welder Helper
W. Brewer	B&B Mechanic
J. Weis	" "
R. Sovern	" "
A. Davila	" "
A. Katmura	" "
W. Carvin	B&B Mechanic

OPINION OF BOARD: This claim is based on the contention that Carrier violated the Agreement between the subject parties when it contracted out the cutting and dismantling (hereinafter called simply "dismantling") of train sheds at its Union Station, Kansas City, Missouri. After the dismantling activity was completed by the Allright Parking Company, with whom Carrier entered into a lease and sale arrangement, the area was paved and used as a parking lot. The paving activity is not involved in this claim.

The Carrier's reason for the subject arrangement was economy, which is a laudable objective but an invalid excuse for violating the Agreement, if a violation occurred. The Carrier's welding and bridge and building forces have been used for similar dismantling work, including the location here involved. Moreover, the Rule 2 describes the subject work, except as it may be covered by the Union Station Maintenance Agreement. Since the latter Agreement does not cover the subject work, it follows that said work is reserved to claimants. If through a lease-sale arrangement the Carrier can contract out the dismantling of structures under its control, there is no effective limit on subcontracting all such work. The claim has merit. The fact that Claimants worked full work week during the involved period is not a defense for Carrier's violation of claimants' contract rights.

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 violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 29th day of July 1977.

CARRIER MEMBERS' DISSENT

to

AWARD 21609, DOCKET MW-20940

(Referee Bailer)

Award 21609 is palpably erroneous. It flies in the face of the decisions in scores of Awards, including Award 21045, which covered the first phase of dismantling portion of the property that was purchased by the Allright Parking Company.

Carrier sold the train sheds, elevators and escalators to the Allright Parking Company, with the stipulation that the purchaser remove his purchased property from Carrier's land. Award 21045, involved the removal of the elevators by the purchaser, while Award 21609 involved the removal of the train sheds and escalators. The majority in Award 21045 said:

> "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 elevators 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 employes did not prevent it from selling property and that once a sale of the property has taken place the rights of employes to perform certain work are at an end. That result necessarily follows because Carrier has contracted with the Organization to have employes represented by it perform certain work for Carrier in the operation of the railroad. After property is sold to another corporation, for non-railroad purposes, Carrier's right to control the work, and the employes' right to perform it is abridged".

The record in Award 21609 showed exactly the same thing as in Award 21045, i.e., that a bona fide Lease and Sale Agreement was entered, under which Allright bought the train sheds and escalators, removed them, and leased the land for a parking lot. After the train sheds and escalators became the property of Allright, Carrier's right to control the work, and the employes' right to perform it no longer existed.

During the panel discussion in this case the Referee was given Awards which have consistently held that the collective agreement does not extend to work over which the Carrier has no control; nor to work on property not used in the operation of the railroad; or

to property not owned by Carrier; nor does it preclude Carrier from selling its property. Some of those Awards are Third Division 3626, 4783, 9602, 10080, 10722, 10826, 12086, 12800, 12918, 14420, 19127, 19639, 19803; Second Division 5732, 5957, and others referred to in those Awards.

The Referee sat on the case for some 18 months before rendering his wholly incomprehensible and erroneous decision. Rediscussion of the claim failed to change his decision.

Award 21609 is palpably erroneous and should be treated for what it is, a complete nullity. For the foregoing reasons, we respectfully dissent.

G. M. Youhn

W. F. Euker

P. C. Carter

J. E. Mason

J. W. Gohmann