Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 30838
Docket No. MW-30454
95-3-92-3-199

The Third Division consisted of the regular members and in addition Referee W. Gary Vause when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(CSX Transportation, Inc. (former Seaboard
(System Railroad Company)

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

(1) The Carrier violated the Agreement when it assigned outside forces (C&S Salvage Co., Inc.) to perform Maintenance of Way work (dismantling tracks) between Sumter, South Carolina and Florence, South Carolina on the Orangeburg Subdivision of the Florence Division beginning on June 11, 1990 and continuing [System File 90-83/12(90-1072) SSY].

(2) The Carrier also violated Rule 2, Section 1 when it failed to confer with the General Chairman and reach an understanding prior to contracting out the work in question.

(3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Foreman C.D. Polk and Trackmen J.L. O'Banner, E.L. Goodwin and C. Mumford, Jr. shall each be allowed pay at their respective straight time and time and one-half rates for an equal proportionate share of the total number of man-hours expended by the contractor's forces performing the subject work."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Beginning on June 11, 1990, the Carrier assigned eight employees of an outside contractor (C&S Salvage Company, Inc.) to perform work of dismantling Carrier's tracks near Cartersville, South Carolina, on the Orangeburg Subdivision.

The Organization filed the instant claim alleging that such work was covered by the Scope Rule, and the Carrier violated the Agreement by not conferring with the General Chairman and reaching an understanding prior to contracting out the work. The Organization contends that the work of dismantling tracks on the Carrier's right-of-way and/or property is contractually reserved to its Maintenance of Way and Structures Department employees under Rules 1, 2, 3, 4, and 5. The critical language appears in Rules 1 and 2:

"RULE 1
SCOPE

These Rules cover the hours of service, wages and working conditions for all employees of the Maintenance of Way and Structures Department as listed by Subdepartments in Rule 5 - Seniority Groups and Ranks, and other employees who may subsequently be employed in said Department, represented by Brotherhood of Maintenance of Way Employes....

RULE 2
CONTRACTING

This Agreement requires that all maintenance work in the Maintenance of Way and Structures Department is to be performed by employees subject to this Agreement except it is recognized that, in specific instances, certain work that is to be performed requires special skills not possessed by the employees and the use of special equipment not owned by or available to the Carrier. In such instances, the Chief Engineering Officer and the General Chairman will confer and reach an understanding setting forth the conditions under which the work will be performed.

It is further understood and agreed that although it is not the intention of the Company to contract construction work in the Maintenance of Way and Structures Department when Company forces and equipment are adequate and available, it is recognized that, under certain circumstances, contracting of such work may be necessary. In such instances, the Chief Engineering Officer and the General Chairman will confer and reach an understanding setting forth the conditions under which the work will be performed. In such instances, consideration will be given by the Chief Engineering Officer and the General Chairman to performing by contract the grading, drainage and certain other Structures Department work of magnitude or requiring special skills not possessed by the employees, and the use of special equipment not owned by or available to the Carrier and to performing track work and other Structures Department work with Company forces."

The Organization's claim was denied by the Carrier's Division Engineer on October 1, 1990, on the ground that:

"[T]he referenced trackage had been removed from service and the line broken by the Carrier's Maintenance of Way forces which rendered the track dead. You make reference to Rule 2 of the Agreement with specific reference to 'all maintenance work'. As you are aware, abandonment of dead trackage is not defined as track maintenance. The track subject of your claim was out of service and no longer a part of the Carrier's operating system; therefore, said work does not accrue to Maintenance of Way employees."

The Carrier asserts that the track in question was abandoned as part of its broader action initiated in 1985 to abandon the entire mainline between Sumter, South Carolina, and Florence, South Carolina. The record shows that on November 28, 1988, the Carrier filed before the Interstate Commerce Commission (ICC) a notice of exemption for abandonment of Carriers' line of railroad between Milepost AK 304.38 at Timmonsville, South Carolina, to Milepost AK 313.43 at Lynchburg, South Carolina. The Carrier's notice stated that no local or overhead rail traffic had moved on the line for at least two years prior to the date of filing. The ICC granted the notice of exemption for abandonment of the line on December 13, 1988. The Milepost for Cartersville is AK 310, which is located in the area for which the ICC granted the notice of exemption for abandonment of track. The record further shows that the track in question had not been used by the Carrier for a period of approximately four years prior to the Organization's filing of its claim.

Based upon the record developed on the property, it is clear that the trackage in question was abandoned track. The removal of that track therefore did not constitute maintenance work within the scope of the Agreement. This point has been firmly established in Awards of this Board. For example, in Third Division Award 19639, the issue was resolved as follows:

> "In a long line of Awards, starting with Award 4783, we have held 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 of the applicable agreement. We have previously on a number of occasions dealt with similar claims involving the same parties and agreement here present; see Awards 9602, 10722, 11150, 11462, 14019 and 14263 among others. We have always been reluctant to set aside prior adjudications of disputes involving substantially similar issues unless such decisions are shown to have been palpably erroneous. In this case no such showing has been made. We conclude therefore, that the work in question herein, was performed on property leased by the Carrier, and not used in the operation or maintenance of its railroad; such work is not within the scope of the applicable schedule agreement.
>
> With respect to Article IV of the May 17, 1968 National Agreement, since the work was not within the scope of the applicable agreement, no notice was required and the agreement was not violated. (See Awards 4783, 10722, 19253 and others)." [Emphasis added.]

In Third Division Award 19994, the Board further elaborated on the meaning of the scope of the Agreement:

> "[T]he 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."

The mere fact that the Carrier continues to own the subject property does not bring the dismantling of abandoned track within the scope of the Agreement. See Third Division Award 4783.

Based upon the established precedent of the Board, the claim must fail.

AWARD

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 27th day of April 1995.