

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30946
Docket No. MW-29134
95-3-89-3-565

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(CSX Transportation, Inc. (former Louisville
(and Nashville Railroad Company)

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

- (1) The Carrier violated the Agreement when it contracted track dismantling work between Mineral Bluff, Georgia and Murphy, North Carolina to outside forces [System File 6(21)(88)/12(89-46) LNR].
- (2) The Carrier further violated the Agreement when it failed to furnish advance written notice to the General Chairman in accordance with Article IV of the May 17, 1968 National Agreement of its intent to contract the work referred to in Part (1) hereof.
- (3) As a consequence of the violations in Part (1) and/or Part (2) above, Maintenance of Way and Structures Department, Track Subdepartment employes G. L. Stites, W. J. Ramsey, M. E. Rice, D. H. Billings, J. L. Blackwell, T. H. Ramsey and K. R. Marple shall each be allowed pay at their respective straight time rates for eight (8) hours for each work day from September 15, 1988 to November 15, 1988 and continuing until the violation ceases."

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 were given due notice of hearing thereon.

Without prior notice to the Organization, Bentley Construction Company was hired by the Carrier to remove rail, spikes, bolts and splices from an abandoned section of track between Mineral Bluff, Georgia and Murphy, North Carolina. According to the Organization, the work lasted from September 15 through November 15, 1988 and the removed materials were returned to the Carrier. The Carrier asserts that the abandonment was with ICC approval.

On the property, it has been decided that engaging a contractor to perform similar work on abandoned track does not amount to the contracting out of work falling within the scope of the Agreement. See Third Division Award 30716:

"The threshold issue which must first be resolved in this case, and which was properly raised in the handling of this case on the property, is whether the work in question falls within the scope of the Agreement. The Board has held in a long line of Awards that work on facilities owned by a Carrier, but used for purposes other than the operation or maintenance of the railroad, do not come under the Scope Rule of the Agreement. (See, e.g., Third Division Awards 19994, 19639, 19253, 9602, and 4783). In Third Division Award 12918, the Board stated:

'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.'

In Third Division Award 19994, the Board stated:

'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

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."

We do not find Award 30716 and the authority it follows to be palpably erroneous. Under the rationale of that line of authority, formal ICC approval of the abandonment is not material. In this case, there is no dispute that the track involved was abandoned. The claim is therefore denied.

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 29th day of June 1995.