Award No. 3626
Docket No. MW-3558

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Grady Lewis, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

GULF, MOBILE AND OHIO RAILROAD COMPANY

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

(1) That the carrier violated agreement in effect by contracting the work of dismantling a power house at Jackson, Tennessee;

(2) That H. B. Blassingame, senior assistant B&B foreman, shall be paid the difference between what he received as assistant B&B foreman and that which he should have received as B&B foreman during the period the outside contractor was engaged in the performance of this work from April 1, 1946, until it was completed.

EMPLOYES' STATEMENT OF FACTS: On or about April 1, 1946, the carrier contracted the work of dismantling a power house at Jackson, Tennessee, to the Owens Construction Company. The contractor employed one foreman and some six laborers in the performance of this work.

Agreement effective June 1, 1942, between the carrier and the Brotherhood is by reference made a part of this statement of facts.

POSITION OF EMPLOYES: Rule 1, Scope, of agreement in effect between the carrier and the Brotherhood of Maintenance of Way Employes reads:

"RULE 1.

SCOPE

The rules contained herein shall govern the hours of service, working conditions and rates of pay of the Maintenance of Way and Structures Department employes herein named: Bridge and building foremen, assistant foremen, carpenters, paint spray operators, brick masons, and laborers; extra gang foremen, assistant foreman, and laborers; section foremen, assistant foremen, relief foremen, apprentice foremen, and laborers; pile driver engineers and firemen, ditcher engineers and firemen, self-propelled coal hoist engineers and firemen of northern and southern divisions, steam shovel engineers, cranemen and firemen, weed burner operators and helpers and sprinkle machine operators, dragline operators and helpers, rail oiling machine operators, weed mowing machine operators on northern and southern divisions, and Jordan spreader operators; acetylene welder foremen, welders, welder-grinders and helpers, while

"This particular kind of work was dangerous and required skill not shown to be possessed by the members of this crew. We feel that this work falls on that side of the line that makes it an exception to the Scope Rule. While it is asserted that the air compressor operator could have done the work performed by the contractor's air compressor man, we think that it would be rather difficult to divide the project into the small component parts; that the contract as a whole being outside the scope of the agreement, it would neither be expedient nor wise to place small obstacles in the path of management and thus limit its discretion and judgment and cause friction and discord and perhaps the failure of the entire project."

The claim should be denied for the following reasons:

1. There is no contractal obligation that the maintenance of way employes perform the work of dismantling the abandoned building and smokestack at Jackson, Tennessee.

2. The demolishing of the abandoned building and smokestack was not maintenance and therefore could not come within the scope of the agreement.

3 The work was specialized in character and hazardous by nature and the claimant was not qualified to supervise this work.

4. The carrier cannot be required to divide the work into small component parts in such a way as to allow claimant to work only in so far as he is qualified or available.

OPINION OF BOARD: On December 31, 1945, carrier abandoned an electric current power plant that it had been theretofore using as a facility in the operation of its business as common carrier, in the city of Jackson, Tennesee. The plant was located in carrier's shop yards and during its operation the maintenance of the building was performed by employes covered by the maintenance of way employes' agreement.

After abandonment, and on April 1, 1946, the carrier contracted for the dismantling of the building and the removal of the material from its premises. In fact, a part of the consideration for dismantling was paid the contractor performing the work in the salvaged material of the wrecked plant.

A difficult and dangerous task of felling a 200-foot chimney, some sixteen feet in diameter at its base, was a part of the work contracted. By reason of the hazard of such work, carrier exacted an indemnifying bond of the contractor, to save it harmless by reason of such demolition. We think this hazardous work, concededly requiring the employment of experts, is sufficient to take the work outside the Scope Rule. But the better test here is the fact of the complete and final abandonment of the property as a facility of the carrier. We recognize the principle that a carrier may not contract out to others the performance of the type of work covered by the scope of the agreement. However, such work must be that of carrying on its business as a common carrier.

At the time this contract was made this property was not, and had not, for three months been any part of any facility used by carrier, and was doomed to never be used again in any capacity by carrier.

Such situation, viewed from either angle, denies the inclusion of the work within the scope of the agreement.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 work is not covered by the agreement, and accordingly constitutes no violation of any rule.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 22nd day of July, 1947.