

Award No. 7765
Docket No. MW-7351

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John Day Larkin, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

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

(1) The Carrier violated the Agreement when work in connection with the dismantling of tracks and bridges on the Powhatan Branch was, in part, assigned to and performed by contractor's forces who hold no seniority under the effective Agreement.

(2) Each employe holding seniority in the Track Subdepartment and in the seniority district in which the disputed work was performed by outside forces be allowed pay at their respective straight-time rates for an equal proportionate share of the total man-hours consumed by the contractor's forces in performing the work in connection with the dismantling of tracks on the Powhatan Branch;

(3) Each employe holding seniority in the Bridge and Building Subdepartment and in the seniority district in which the disputed work was performed be allowed pay at their respective straight-time rates for an equal proportionate share of the total man-hours consumed by the contractor's forces in performing the work in connection with the dismantling of bridges on the Powhatan Branch.

EMPLOYEES' STATEMENT OF FACTS: The expenditure of necessary funds for the use of labor, material, and equipment to dismantle the Carrier's Powhatan Branch was specifically authorized by Carrier's A. F. E. No. 42501.

The work of dismantling this branch line was assigned by contract to the Thomas Construction Company without negotiation with or approval and/or agreement by the duly designated representatives of the Claimant employes. In addition to certain track structures which were dismantled on this branch line, three railroad bridges were also dismantled by the contractor's forces.

Various units of Carrier-owned work and roadway equipment were loaned to the contractor by the Carrier and certain of the Carrier's employes were assigned to operate some of the equipment so loaned to the contractor by the Carrier. During the time in which the contractor's forces were engaged in

Prior to abandonment of this trackage it formed a part of the facilities of the L&N Railroad in its operation as a common carrier. During its operation maintenance was performed by employees covered by the Maintenance of Way Employees' Agreement. When abandonment of the Powhatan Branch was authorized, it no longer formed a part of the facilities used in the operation of the railroad and therefore was charged out of the carrier's accounts. Since it was no longer required as a facility in the operation of the railroad, the Maintenance of Way Agreement was no longer applicable and therefore the carrier was justified in contracting for the dismantling of the branch and its removal from the premises. No work was performed by the contractor on the spur to which this branch was connected. Contractor removed the Powhatan Branch up to clearance point of switch only, after which switch was removed and track lined up by L&N forces.

The scope rule of the agreement between the L&N Railroad and its employees represented by the Brotherhood of Maintenance of Way Employees covers rates of pay and working conditions of several classes of employees while engaged in Maintenance of Way and Structures services of the carrier. With the abandonment of the Powhatan Branch it no longer constituted a facility of the carrier in its operation as a common carrier and as a result no further maintenance was required.

Carrier maintains that the work of removing trackage, etc., on abandoned branches is not work usually performed by maintenance of way employees only. On the contrary, on this property it has been recognized over the years that the carrier had the right to contract the removal of trackage, etc., on abandoned branches. In support of this we are attaching Carrier's Exhibit "A", which is a print of drawing H-65534, on which is listed branches abandoned since June 2, 1932, from which it will be noted that the larger number of removals of trackage on these abandoned properties have been performed by contractor's forces with no protest from the employees until this case was filed with the Board.

In view of the foregoing there is no merit to the claim of the employees and it should be denied.

(Exhibits not reproduced)

OPINION OF BOARD: This Carrier, by agreement with the Franklin Coal Mining Company, established in 1918 what later came to be known as the Powhatan Branch. This was 3.1 miles in length and was used exclusively for moving empty cars to the mine and taking away loaded cars. From 1946 to 1951, the amount of coal shipped from the mine diminished to the point where this branch became useless. It remained unused for more than two years, after which the Carrier received permission to discontinue operating the branch and made a contract with the Thomas Construction Company of Birmingham, Alabama, for the removal of its tracks and other facilities on this branch line.

Since the Carrier retained ownership of all salvaged material and permitted some of its equipment to be used by the contracting firm, the Organization has pressed this claim. The question is whether the kind of work performed by the contractor belongs exclusively to the Maintenance of Way employees under the Scope Rule of the Agreement. This rule is rather broad and does not contain a description of the kind of work to be covered. It does provide that these employees "shall perform all work in the maintenance of way and structures department."

This type of question has been before this Board on many occasions and the applicable principles have been stated in numerous awards. Where, as here, the scope rule is ambiguous as to the kind of work covered, it is generally interpreted to reserve all work usually and traditionally performed by the class of employees who are parties to the Agreement. Thus it remains to be decided in each case whether the particular type of work involved has been "usually and traditionally performed" by the Claimants.

The record shows that, on this Carrier's property, the removal of abandoned tracks has not been exclusively reserved to the Maintenance of Way employees. On certain occasions the work has been assigned to them. But more frequently it has been contracted out. This has been the practice since June 1932. From that date until June 29, 1954, the removal of abandoned facilities were assigned to the Carrier's employees some 26 times. During this period of twenty-two years, the same kind of projects were performed exclusively by outside contractors on 32 occasions, and were partially performed by contracting firms on two other occasions. In short, a substantial majority of this type of work has been contracted out before this claim was filed. (See Carrier's Exhibit "A".) In view of this record, any prior decisions of this Board, we find no sound basis upon which to sustain this claim. Awards 6910, 7600 and cases cited. We must conclude that the removal of abandoned branch lines has not been reserved exclusively to Claimant employees.

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 Employees involved in this dispute are respectively carrier and employees 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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 1st day of March, 1957.