

Award No. 11085

Docket No. MW-10345

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert O. Boyd, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

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

(1) The Carrier violated the effective Agreement when it assigned the construction of a 30 foot extension to a concrete culvert at South Corbin, Kentucky, to a contractor whose employees hold no seniority under the effective Agreement.

(2) The employees holding seniority in the B&B Sub-Department on the Cumberland Valley Division each be allowed pay, at their respective straight time rates, for an equal proportionate share of the total man hours consumed by contractor's forces in performing work referred to in Part 1 of this claim.

EMPLOYEES' STATEMENT OF FACTS: On or about April 8, 1957, the work of constructing a 30-foot extension to an existing concrete culvert at South Corbin, Kentucky was started. That work was assigned to and performed by forces employees by an outside contractor.

Shortly before that work was started by the contractor's forces, the Carrier recalled all B&B employees who had been laid off from the Cumberland Valley Division. However, in recalling such employees, the Carrier did **not** arrange to have "cut-back" employees restored to the highest rank in which seniority was held, but continued to have certain employees working in lower ranks as follows:

B. M. Estep, with **B&B foreman's** seniority from June 4, 1951 — working as a **lead carpenter**.

James Thompson, with seniority as a **carpenter** from August 2, 1944 — working as a **helper**.

Chester Miracle, with seniority as a **carpenter** from December 24, 1953 — working as a **helper**.

C. R. Sivils, with seniority as a **carpenter** from April 30, 1951 — working as a **helper**.

Rule 41(a) reads in part:

"All work which is done by Company forces in the construction, maintenance, repair, or dismantling of bridges, buildings, tunnels, wharves, docks, water tanks, turntables, platforms, walks and other structures, built of brick, tile, concrete, wood, or steel . . . shall be performed by employees of the bridge and building subdepartment."

The foregoing rule contemplates the contracting of work of the nature set out in the rule. The language of the rule is clear as to its intent, i.e., "All work which is done by company forces . . . shall be performed by employees of the bridge and building subdepartment."

Rule 2(h) of the agreement provides:

"The railroad company may contract work when it does not have adequate equipment laid up and forces laid off sufficient both in number and skill with which the work may be done."

Carrier had no equipment laid up, nor did it have any B&B employees cut off on the C. V. Division. Therefore, the action taken in contracting the extension of the culvert was fully supported by Rule 2(h) of the current maintenance of way agreement, copy of which is on file with this division.

Construction of these culverts was necessary to provide embankment for additional tracks. To accomplish this, it was necessary that the culvert extension be completed prior to widening the embankment to permit of accommodating the grading equipment.

In view of the foregoing, carrier asserts that its action was in accordance with the provisions of the agreement and the claim of the employees must, therefore, be denied.

All matters referred to herein have been presented, in substance, by the carrier to representatives of the employees, either in conference or correspondence.

OPINION OF BOARD: On April 4, 1957, the Carrier, assigned the work of constructing a 30 foot extension to a concrete culvert at South Corbin, Kentucky, to a contractor whose employees held no seniority under the effective agreement between the parties here concerned. The construction of the culverts was necessary in connection with the grading preparatory to installation of additional yard tracks.

It is contended by the Organization that this work was of the kind of work contemplated by the Scope Rule (Rule 1) and reserved thereby to employees holding seniority in the Maintenance of Way and Structures Department, and specifically reserved to the Bridge and Building Subdepartment as provided in Rule 41(a). This would be clearly so unless, as is contended by the Carrier, the circumstances enabled the Carrier to apply one of the exceptions to the Scope Rule enumerated in Rule 2. Specifically, the Carrier relies on paragraph (h) of Rule 2, which reads:

"The railroad company may contract work when it does not have adequate equipment laid up and forces laid off, sufficient both in number and skill, with which the work may be done."

The Carrier asserts, and it is admitted, that when the work in question was performed there were no B&B employees laid off in the Columbia Valley Seniority District, although a number were cut-back. To this the Organization replies that there were employees on other divisions laid-off who were capable of performing the work. But the Carrier calls attention to Rule 4 which limits the seniority rights of the employees to their respective districts, and it cites Award 10982 (McMahon) where the use of employees of one seniority district in another was found to be in violation of the agreement. The Carrier further asserts that while it had equipment to do the work, there was no adequate equipment laid up; that the equipment needed for the work in question was assigned and needed for other work by company employees. This assertion had not been controverted.

We, therefore, find that the exception provided in Rule 2(h) was available to the Carrier in this instance, and as the work was not done by company forces Rule 41(a) is not applicable.

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: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 31st day of January 1963.