

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Preston J. Moore, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

SOUTHERN RAILWAY COMPANY

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

(1) The Carrier violated the effective Agreement when it assigned the work of paving the railroad crossing between Mile Posts 459 and 463-A to Ballew and Roberts Construction Company whose employes hold no seniority rights under the provisions of this Agreement.

(2) Extra Gang Foreman C. M. Blanton and Laborers George Joyner, Tracy Hunter, Harvey Clay, John Watkins, H. D. Harris, Mose Spight and Norman Hayes each be allowed pay at his respective straight time rate for an equal proportionate share of the total man hours consumed by the contractor's forces in performing the work referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: The position of Track Foreman (Extra Gang) is encompassed within the scope of the Agreement between the parties commonly referred to as the "Foreman's Agreement", whereas positions of Laborer (Extra Gang) are encompassed within the scope of the Agreement between the parties commonly referred to as the "Laborers' Agreement."

Prior to January 14, 1957, the Carrier's Timbering and Surfacing Gang No. 11 performed the preparatory work necessary to the paving of three railroad crossings between Mileposts 459 and 463-A. Specifically, this gang removed all the old asphalt, crossing timbers etc., then replaced the old crossings with new ties, surfaced and lined the track and filled in the crossings with sand and gravel to the top of the rails.

During the period from January 14 to 19, 1957, the work of removing the sand and gravel from the afore-mentioned crossings to the top of the ties and then replacing it with hot asphalt mixture and rolling it with a

This fact is evidenced not only by the rules, but by affidavits attached to and made a part of the record.

(d) The involved work required special materials, skills, tools and equipment, none of which were owned or in possession of the railway company, therefore, under the principles of prior Board awards, several of which interpret the agreements here in evidence, the Carrier's unrestricted right to contract the referred to work is clearly recognized.

(e) Claim, being one for compensation for work not performed, is not valid under the plain language of Rules 49 and 40 of the respective agreements in evidence. They negative the claim.

(f) Prosecution by the Brotherhood of the claim is nothing more than a demand that the Board, by an award, create work for employes of the maintenance of way class or craft. That the Board does not have authority to create such a scheme as the Brotherhood here attempts to establish has heretofore been recognized in prior decisions of the Board.

Claim, being without any basis, vague and indefinite, should be dismissed by the Board for want of jurisdiction. However, in the event it is not dismissed, the Board cannot do other than make it a denial award, because to do otherwise would be contrary to the plain, unambiguous language of the agreements in evidence.

All relevant facts and arguments involved in the dispute have heretofore been made known to employe representatives.

Carrier, not having seen the Brotherhood's submission, reserves the right to make appropriate response thereto and submit any additional evidence deemed necessary for the protection of its interests.

(Exhibits not reproduced.)

OPINION OF BOARD: This is a dispute between The Brotherhood of Maintenance of Way Employes and The Southern Railway Company.

The Carrier contracted the work of paving three crossings between Mileposts 459 and 463-A to a private contractor. The work consisted of removing the sand and gravel from the crossings to the top of the ties and then replacing it with hot asphalt mixture and rolling it.

Award 10715 is squarely in point and on the same property. The opinion expressed therein rules on the issues presented in this dispute. We must follow the doctrine of "Stare Decisis."

Although we might disagree with parts of the opinion in Award 10715, we are not prepared to declare the award to be palpably wrong. Therefore we find the Agreement was not violated.

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 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 14th day of February 1963.