

**Award No. 11289**

**Docket No. MW-10308**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

**Donald F. McMahon, Referee**

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**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 an underpass approximately 300 feet long, 16 feet wide and 22 feet high, located approximately 1/5 mile north of Cedar Street, Tarrant City, Alabama to Oman Contracting and Construction Company, whose employees hold no seniority under the effective agreement.

(2) That employees holding seniority in the B&B Subdepartment on the Birmingham Division, each be paid at their respective straight time rates of pay 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.

**EMPLOYEES' STATEMENT OF FACTS:** A new yard was being constructed by the Carrier just outside the city limits of Birmingham, Alabama and just north of the existing yard and shop facilities at Boyles, Alabama.

A track to serve the Lehigh Cement Company was also to be constructed. This industry track would have to cross this new yard. A crossing at grade was impracticable. Consequently, it was decided to have this industry track underpass the yard tracks.

Consequently, the Carrier undertook to construct the concrete underpass before the yard construction reached that location. In that way, when yard construction reached the underpass location, yard construction would simply continue by placing fill, etc., over the previously constructed concrete underpass.

The work of constructing the underpass was assigned to a contractor whose forces hold no seniority under the subject agreement. Very little was necessary and the only equipment used by the contractor was a crane and a

agreement has not been violated and in support of this position makes reference to:

**"Rule 41(a). All work which is done by Company forces in the construction, maintenance, repair, or dismantling of bridges, buildings, tunnels, wharves . . . shall be performed by employees of the bridge and building subdepartment." (Emphasis ours.)**

Carrier has complied with the foregoing in the construction of the Huntsville Road underpass. The language of the rule—

**"All work which is done by company's forces . . ."**

fully supports carrier's action in construction of the Lehigh underpass extension. Further Rule 2(h) 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 asserts it did not have laid up the type of equipment necessary for the completion of a job of this kind, in which it was necessary that the excavation and construction of the Lehigh underpass extension be carried on at the same time. Neither did it have any B&B employees laid off on the Birmingham Division.

In view of the circumstances as set forth in the foregoing, carrier asserts claim is without merit and should 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.

(Exhibits not reproduced.)

**OPINION OF BOARD:** The facts as shown by the record before the Board, are that on or about October 2, 1956, Carrier contracted with the Oman Construction Company, to the grading and drainage work as a part of the construction of a freight handling and classification yard, designated as located at Boyles, Alabama, Birmingham Division. The employees of the contractor held no seniority rights under the agreement, with the Organization involved here.

The organization here contends that carrier violated the provisions of Rules 1, 5(b) and 41 of the effective agreement which reserved work here involved to employees of the B&B Sub-department.

Carrier contends that it did not violate any of the provisions of the Agreement here involved, and relies on Rule 2(h), to support its position. Rule 2(h) an exception to Rule 1, is as follows:

**"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."**

From all the facts of record before us, Carrier denies it had any laid off employees in its Birmingham Division who were available to perform the

required work, nor the equipment necessarily available as would be required to perform the subcontracted work. The Organization has offered no positive proof in the record that there were laid off employees in the Birmingham Division who were available for the work required. There were cut-off employees, all of whom were working regularly, in lower rated positions, because of a force reduction prior to the time here involved. There is no requirement in Rule 2(h) that Carrier was required to put such employees back in their former positions. The employees so working were not laid off employees, under the rule. Nor can we find proof by the Organization that Carrier was required to transfer employees from other Divisions to the Birmingham Division to do the work here.

The proof offered here does not support a sustaining award.

Carrier under the provisions of Rule 2(h) was authorized to subcontract the work complained of.

The allegations here in reference to equipment available are not supported, as contended by the Organization.

**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 Carrier did not violate the Agreement.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of April, 1963.