

Award No. 11728

Docket No. MW-10983

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Jim A. Rinehart, 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, during the period from October 10, 1957 through November 4, 1957, it assigned other than its Bridge and Building employes to dismantle the mechanism in the old coal chute in the Carrier's Radnor Yards at Nashville, Tennessee.

(2) B&B Carpenters J. M. Yearwood and L. M. McElyea and Helpers M. Ellis and R. H. Burns each be allowed pay for one hundred eight (108) hours at their respective straight time rates because of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The Carrier owns a coal chute located in its Radnor Yards at Nashville, Tennessee which was originally constructed and placed in service by its Bridge and Building employes. Because of the substitution of diesel for steam power, the structure is no longer used to supply coal to locomotives.

During the period from October 10, 1957 through November 4, 1957, the work of dismantling the mechanism in the afore-mentioned coal chute was assigned to and performed by Mechanical Department employes (Boilermakers), who hold no seniority rights under the provisions of this Agreement.

The work consisted of dismantling and removing the metal scrap material and equipment (such as the buckets and chutes, cut-off gates and shafting leading from the receiving hopper to the chute, etc.) from the above referred to structure. Four hundred and thirty-two hours were consumed by the Mechanical Department employes (Boilermakers) in the performance of this work.

The Agreement violation was protested and the instant claim filed in behalf of the Claimants. The claim was declined as well as all subsequent appeals.

It is hereby affirmed that all data herein submitted in support of our position have heretofore been presented to the Carrier and are hereby made a part of the question in dispute.

CARRIER'S STATEMENT OF FACTS: Having no further need for it because of Dieselization, carrier dismantled the coal chute at Radnor, Tenn. The work of dismantling was performed intermittently beginning with October 9th and completed November 29th. Maintenance of Way forces and Mechanical Department forces both were used in the retirement of this facility.

POSITION OF CARRIER: For many years it had been the practice at Radnor, Tennessee, for mechanical department forces to maintain the elevator buckets, buckets in the bottom of the elevator pits, steel bins that are used to store coal, tipples extending from these bins to the locomotives, sand house elevator, sand chutes and the screening in the sand house. No question has heretofore been raised that the performance of such repair work was not properly assignable to employes covered by agreement between this carrier and System Federation No. 91, AFL, affiliated with the Railway Employes Department.

Had it become necessary to remove and replace any of these parts for repairs, the work would have been performed by boilermakers, as had been done in the past. In these circumstances, carrier submits that there is no difference in dismantling the parts for repairs and dismantling them for scrapping. Therefore, the claim of the employes lacks merit and should be denied.

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

OPINION OF BOARD: The Carrier determined to dismantle a coal chute in its yards at Nashville. After dieselization it was no longer needed. Maintenance of Way and Mechanical Department forces (Boilermakers) were both used in the work.

The Bridge and Building employes (Maintenance of Way) claim they were entitled to do the work of dismantling done by the Boilermakers.

The Carrier contends that if Bridge and Building employes had such right they waived it in favor of the Boilermakers by agreement of May 29, 1947, as follows:

"MEMORANDUM OF AGREEMENT AS TO DIVISION OF WORK BETWEEN THE INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS AND HELPERS OF AMERICA AND MAINTENANCE OF WAY FORCES ON THE LOUISVILLE AND NASHVILLE RAILROAD, IN CONNECTION WITH THE INSTALLATION, REPAIRING AND MAINTENANCE OF COALING STATIONS, CINDER PITS, CONVEYORS AND TIPPLES.

"The following is agreed to between the parties signatory hereto:

"WORK TO BE PERFORMED BY MAINTENANCE OF WAY FORCES

"Construct and put in operation all coal chutes and other facilities for coaling engines, cinder pits, and maintain the structures housing

the foregoing facilities, which includes the renewal of sheet metal chutes leading from the bucket to storage bins, cut-off gate arrangements, renewal of brackets for sheave wheel connections which are bolted to concrete walls, concrete and structural work, track and guides for bucket on coal chute and cinder pits, measuring pockets, aprons on coal chutes, cutter bar or gates and structural steel work and cinder pit hoppers on cinder pits.

**“WORK TO BE PERFORMED BY INTERNATIONAL
BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS
AND HELPERS**

“After completion of the structure the Boilermakers will maintain and apply the buckets, and chute, cut-off gates and shafting leading from the receiving hopper to the bucket; repair (other than renewal) of chute leading from bucket to storage bins; repairing and applying aprons on Red Devil or direct coalers, endless chain conveyors, cinder buckets, small automatically operated coal chute conveyor buckets, and fillers which fill the conveyor bucket from the storage pit.

“This agreement shall be effective the 16 day of June, 1947.

“Signed at Louisville, Kentucky, this the 29 day of May, 1947.

“For the
BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYES:

/s/ Geo. H. Davis
General Chairman

“For the

INTERNATIONAL BROTHERHOOD
OF BOILERMAKERS, IRON SHIP
BUILDERS AND HELPERS OF
AMERICA

/s/ Elbert Hutson
General Chairman”

The part of the effective agreement between Claimant and Carrier involved here took effect September 1, 1947 and is as follows:

“RULE 41. BRIDGE AND BUILDING WORK

“41(a) 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, and the erection and maintenance of signs attached to buildings or other structures, shall be performed by employes of the bridge and building subdepartment.”

The word “dismantle” is not found anywhere in the work allocated to the Boilermakers in its agreement with Bridge and Building employes. It did not

tie Carrier's hands. The word "dismantling" is found in Rule 41 (a) which specifies certain structures and then includes generally "other structures built of . . . concrete, wood, or steel." The rule further states "All work which is done by Company forces in . . . dismantling . . . other structures, etc."

Carrier cites a great number of awards involving work done by general contractors in dismantling which was held not to violate the Agreement. They are not in point, as here the work of dismantling was done by "Company forces" which brings it under provisions of Rule 41 (a). Furthermore, the agreement contains an exception to the Scope Rule which authorizes the Carrier to contract work out, under certain conditions.

We find Award No. 10750 — Stark more nearly in point. The rule involved there is very similar to Rule 41 (a). The words "other structures" and "dismantling," were construed and the claim of Maintenance of Way sustained. We see no distinction between dismantling a structure and mechanism thereof. Definitely the mechanism was not being repaired or replaced. Its use as coal chute mechanism was at end; its dismantling was work for B&B employes and the claim must be sustained.

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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of September 1963.