Award No. 13272
Docket No. MW-11453

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Francis M. Reagan, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

ILLINOIS CENTRAL RAILROAD COMPANY

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

(1) The Carrier violated the effective Agreement when, during September of 1957, it assigned the grading work for side track extensions at Money and Cruger, Mississippi to a General Contractor whose employes hold no seniority rights under the provisions of this Agreement.

(2) On and Off Track Dirt Moving Machine Operators D. F. Holland, E. O. Peeples, John H. Caldwell Jr., and Howard A. Morris each be allowed pay at their 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: In 1957, the Carrier undertook to extend its side tracks approximately three-fourths of a mile at Money and Cruger, Mississippi.

During September of 1957, the work of clearing off the right-of-way, constructing and packing the fills or grades for these side track extensions was performed by a General Contractor whose employes hold no seniority rights under the provisions of this Agreement. The contractor used four dirt moving machine operators and one oiler in performing the aforementioned work.

The employes holding seniority as On and Off Track Dirt Moving Machine Operators on the Memphis Division (where the work was performed) were sufficiently skilled to do this work with efficiency and expedition and were ready and willing to perform the work assigned to contract.

The Carrier had sufficient equipment to do the work that was performed by the contractor's forces who hold no seniority rights under the effective Agreement.

The Agreement in effect between the two parties to this dispute dated September 1, 1934, together with esupplements, amendments, and interpretations thereto is by reference made a part of this Statement of Facts.

2. The tools and equipment required for such work are similar to those required in highway construction not for maintenance of Carrier's right of way.

3. The employes involved herein have suffered no loss as a result of Carrier's action.

4. The Employes recognize such work is excepted from the scope of their agreement as this is the first such complaint made in the history of the agreement between the parties during which time work of less magnitude has been contracted.

There is no basis on which this claim can be sustained. The records show that work of lesser magnitude has been contracted before and after the current agreement became effective. The Third Division of the Board has held in many instances that where a Carrier has ordinarily contracted work it may continue to do so. See Awards 3839, 5489, 5747, 6251, 6299, 6706, 7600, 7765, and 7806.

The claim should be denied in its entirety.

(Exhibits not reproduced).

OPINION OF BOARD: Contention is made the Carrier violated the Scope Rule of its agreement with the Claimants when it employed a general contractor to do the grading work for side track extensions at Money and Cruger, Mississippi.

The facts not disputed by the Claimants are:

1. Fill material of 10,352 cubic yards was needed at Money, Mississippi.

2. Fill material of 4,557 cubic yards was needed at Cruger, Mississippi.

3. Equipment owned by the Carrier and cubic capacity of each was:

a. 1 Dragline-20-capacity ½ cubic yard.

b. 1 American Ditcher AD-10 capacity 9/16 cubic yard.

c. 1 American Ditcher AD-9 capacity 9/16 cubic yard.

d. 1 Front End Loader C-130 capacity 1 cubic yard.

4. Equipment used by general contractor, the cubic capacity of each and its acquisition cost was:

a. One D-6 Tractor with 9 cubic yard wheel scraper $36,000.00.

b. Three D-7 Tractors with 11 cubic yard wheel scrapers —cost $184,800.00.

5. Fill material was not available at "trackside" but had to be furnished by the contractor and hauled to the side track extension area.

The Carrier's only item of equipment capable of hauling fill material from a distance to the side-track extension area was the Front End Loader C-130 with a capacity of 1 cubic yard. The Dragline-20 machine with a ½ cubic yard scraper bucket, mounted on a crawler base was limited by the reach of its boom and the awkwardness of its movement in carrying anything a distance, from making any contribution toward the movement of the fill material. The American Ditchers mounted on railroad cars were limited to trackage in obtaining the fill material. The Front End Loader would have had to make 10,352 trips in search of fill material at Money, Mississippi and 4,557 trips at Cruger, Mississippi for its hauling capacity was 1 cubic yard.

The scraper-trailer equipment used by the general contractor costing $220,800.00 had a total carrying capacity with each trip of 45 cubic yards. It further was the highly mobile, speedy, "off the road" type equipment specifically designed for the grading-filling needs of the side track extension projects.

The Carrier is not required to have expensive equipment whose use is only occasionally needed.—The need for expensive equipment for which it has only occasional use may justify a farming out of the work to persons having the equipment to perform it. Conform 6541 (Whiting), 6424 (Ferguson), 11208 (Coburn) and others.

In Award 757 and others it was held work may be contracted out when special skills, equipment, or when the work is unusual or novel in character or involves a considerable undertaking.

Applying these rules to the instant case the work involved is a considerable undertaking and the projects are not within the capabilities of the Carrier's equipment.

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

The Agreement has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 10th day of February 1965.