

Award No. 13329

Docket No. MW-13324

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
LOUISVILLE AND NASHVILLE RAILROAD COMPANY**

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

(1) The Carrier violated the Agreement when it assigned or otherwise permitted employes of the Western Union Telegraph Company and/or Southern Bell Telephone Company to cut right-of-way at or near Milepost 447.

(2) Foreman L. M. Atchison and Track Laborers D. E. Thornburg, O. Wilson and R. White each be allowed eight hours' pay at their respective straight time rates because of the violation referred to above.

EMPLOYES' STATEMENT OF FACTS: Between February 1, 1961 and February 6, 1961, employes of the Western Union Telegraph Company and/or the Southern Bell Telephone Company cut the right-of way on Section 49, Milepost 447.

Claimants, Section Foreman Atchison and Section Laborers Thornburg, Wilson and White are regularly assigned to Section 49 and hold positions which are encompassed within the scope of the effective Agreement.

The Agreement in effect between the two parties to this dispute dated May 1, 1960, together with supplements, amendments, and interpretations thereto is by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: The Scope Rule of the effective Agreement reads:

"RULE 1. SCOPE

Subject to the exceptions in Rule 2, the rules contained herein shall govern the hours of service, working conditions, and rates of pay for all employes in any and all subdepartments of the Maintenance of Way and Structures Department, represented by the Brotherhood of Maintenance of Way Employes, and such employes shall perform all work in the maintenance of way and structures department."

We respectfully request that the claim be allowed.

CARRIER'S STATEMENT OF FACTS: Sometime between February 1, 1961, and February 6, 1961, someone other than employes of the company cut bushes and undergrowth from beneath wires located on pole in the area.

POSITION OF CARRIER: The first information carrier had that other than its employes had cut these bushes was upon receipt of its claim from a representative of the Maintenance of Way employes. At this particular location L&N wires are on the top crossarm of the pole. All Southern Bell Telephone Company and Western Union wires are on the lower crossarm and in a cable below the crossarm. As a result these lower wires are vulnerable to bushes and trees growing up into the wires long before those belonging to the carrier are affected. Both the telephone company and Western Union are given the right to protect their wires.

While carrier did not authorize anyone to cut the bushes at this time, at the same time it is its position there has been no violation of the agreement in the action taken. Accordingly, the claim should be denied.

OPINION OF BOARD: Attention is directed to paragraph (1) of the Claim.

The record contains no evidence that Carrier "assigned or otherwise permitted employes of the Western Union Telegraph Company and/or Southern Bell Telephone Company to cut right-of-way at or near Milepost 447." For lack of proof, we will dismiss the Claim.

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 Carrier did not violate the Agreement.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 25th day of February 1965.