

Award No. 14122

Docket No. MW-14418

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Don Harr, 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 Agreement when it assigned the work of grading and of building two (2) new bridges on the new branch line near Cumberland, Kentucky to other than its Bridge and Building subdepartment forces. (Carrier's file E-201-4 E-201)

(2) That the following quoted claim as presented under date of October 30, 1962, be allowed. "Claim is made on behalf of the following named employees in the class concerned, with seniority in each class shown, that they each be paid an equal proportionate share of the total man hours consumed by employees of the Codell Construction Company, a contractor who is assigned the work of grading and the building of bridges on the new branch line near Cumberland, Kentucky:

Name	Rank 4	Rank 5	Rank 6
M. C. Harber — Foreman	4-20-46	3- 4-42	10-21-36
Chester Miracle — Carpenter	12-24-53	8-20-48	7-28-48
P. H. Greer — Carpenter	3-23-54	10- 8-48	1-13-47
Eugene Frazier — Carpenter	7-26-57	1-10-49	1-10-49
J. V. Hall — Carpenter		5- 7-51	10- 7-46
David Hurst — Helper		1- 5-54	10- 6-52
Kenneth Jones — Helper		2-15-54	6-22-53
D. W. Parks — Helper		3-23-54	9-17-51
R. E. Rowlett — Helper		5-3-54	8- 3-53
M. R. Helton — Laborer			5-26-52
Oscar Abner — Laborer			2-16-53
M. D. Britton — Laborer			3-21-53
H. Wilson — Laborer			1-27-54
M. H. Miracle — Laborer			2- 2-54
Arnold Estep — Laborer			5-11-54

The above named employees, with one or two exceptions, were cut off in force reduction or working in a lower class than their seniority entitled them to work in and thus their rights have been violated under the rules of the current Agreement, effective May 1, 1960, as revised and amended, and each claimant should be made whole insofar as pay, vacation rights, Health and Welfare benefits or other benefits are concerned."

EMPLOYEES' STATEMENT OF FACTS: When the General Chairman learned that the Carrier had assigned the work of constructing two (2) bridges on the new branch line near Cumberland, Kentucky to employees of the Codell-Oman Construction Company, who hold no seniority rights under the Agreement, he wrote to the Carrier's highest appellate officer on September 28, 1962 and again on October 3, 1962, urging the Carrier to assign the work to the claimants. When the General Chairman did not receive a reply to either of said letters, he presented the subject claim to the Carrier's Division Engineer, wherein he set forth the facts in the case as follows:

"The contractor's forces built one bridge approximately 6 miles from Cumberland, Kentucky, finishing that bridge on or about October 16, 1962. This bridge, which is a three span steel bridge, is supported by two poured concrete abutments approximately 2 feet by 12 feet by 18 feet and two concrete piers approximately 4 feet by 15 feet by 18 feet. The Contractor's forces built the piers and abutments and set the steel spans thereon, however, B&B Department employees are scheduled to place the deck, that is, the supporting timbers for the track, on the bridge.

The second bridge built by the contractor's forces is located approximately 7½ miles from Cumberland, Kentucky, and will be about the same, if not exactly like, the bridge described above.

Claimant M. C. Harber does not hold seniority as B&B Foreman, but is fully qualified for such work and has done quite a bit of relief work in the foreman's class due to vacations, sickness, etc.

There is no reason why employees named herein could not have performed the work in question because machines and other equipment were readily available and could have performed all of the work, including the setting of the spans on these bridges.

The spans involved are approximately 10 feet by 25 feet (2 spans) and 10 feet by 37 feet (1 span).

It cannot be argued that equipment belonging to the railroad company could not have gotten to the site of these bridges simply for the reason that the contractor succeeded in getting his equipment there for use on the bridges and the same would follow insofar as the equipment belonging to the railroad is concerned.

The railroad company has concrete mixers of sufficient capacity to have mixed the concrete for the pouring of the piers and abutments and they have cranes of sufficient capacity to fill the forms needed for the pouring of such piers and abutments."

Claim was timely and properly presented and handled at all stages of appeal up to and including the Carrier's highest appellate officer.

Without in any way prejudicing its position, carrier submits that that portion of Section 2 of employees' claim pertaining to Health, Welfare benefits, vacation rights, and other benefits are concerned should be disregarded as it is not within the jurisdiction of the Railroad Adjustment Board.

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

OPINION OF BOARD: In January, 1962, Carrier contracted with Codell-Oman, Contractors, for the construction of a roadbed and drainage structures which included bridges for an industrial spur track on Carrier's Cumberland Valley Division.

The Employees protested the contractor building the bridges and doing the grading in connection therewith, alleging that such work should have been performed by employees in Carrier's Bridge and Building Subdepartment.

Claim was properly presented, on behalf of the named employees, and appealed up to the Carrier's highest appellate officer.

The Carrier takes the position that the Agreement permits the contracting out of work and that it has been their practice, over a period of years, to do so. In their submission they state that this Board has denied similar claims.

Carrier contends that the exception contained in Rule 2(f) is applicable in this case. Rule 2(f) provides:

"RULE 2.

EXCEPTIONS TO RULE 1

2(f) 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."

The dispute in this case is whether or not the Carrier had "... adequate equipment laid up and forces laid off ..." The Carrier states it could not meet these conditions and the Employees attempt to prove that they could.

We have carefully reviewed the records in three previous cases involving the same parties and rules. Awards 11085 (Boyd), 11289 (McMahon) and 13979 (Williams). In each of these awards the Board denied the Employee's claim.

We can find no substantial difference between these previous cases and the case at bar. The Board in these prior awards found that the record contained probative evidence presented by the Carrier to sustain its position. The evidence contained in the record here is similar.

We feel that the Carrier under the provisions of Rule 2(f) was entitled to contract this work. We will deny 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 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 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 26th day of January 1966.