

Award No. 14820
Docket No. MW-15809

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, 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 contracted with the Carter Construction Company, whose employes hold no seniority under the scope of the Agreement, to perform the work of removing a temporary track and to perform other track work between Mile Post 2 and Mile Post 3 on Line "D." (Carrier's File E-201-6 E-201.)

(2) Track Foreman J. W. Graham and Track Laborers Fred Stafford, James Webb, W. T. York, Oliver Wade, Walter Webb and Thomas Wells each be allowed pay at their respective straight time rates for an equal proportionate share of the total number of man hours consumed by the contractor's forces in performing the work referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The facts in this case were fully and accurately set forth in the General Chairman's letter of claim presentation reading:

"November 4, 1964
1-23

Mr. H. B. Lewis
Division Engineer
L&N Railroad Co.
110 West 9th Street
Chattanooga, Tennessee

Dear Sir:

Claim is hereby made that the following named Track Department employes with seniority in the applicable rank indicated, each to be paid an equal proportionate share of the total man hours worked by employes of Carter Construction Company, or other contractor, while said contractor's forces were assigned to remove a temporary track that had been used at a point where an overhead bridge for highway traffic was constructed between Pole 3-10 and Pole 3-4 on Line D, which carries inbound freight traffic to Radnor Yard from the Atlanta and Chattanooga Divisions.

Correspondence exchanged in connection with the claim is attached and identified as Carrier's Exhibits AA, BB, CC, DD, EE, FF, GG, HH, and II.

(Exhibits not reproduced.)

OPINION OF BOARD: Rule 2 (f) of the applicable agreement provides that:

"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 Organization admits Claimants here were not cut off employees at the time, but in its ex parte submission to this Board the employees allege "the Carrier has never denied or refuted the fact that it had sufficient equipment laid up to perform the subject track work."

On April 9, 1965 the Carrier while the claim was being handled on the property, advised the General Chairman:

"All our men and equipment have been, and still are, on important maintenance of [sic] work which must be done. . . ."

The issue we have here is the same issue that was disposed of by Awards 11085 (Boyd), 11289 (McMahon), 13979 (Williams), and 14122 (Harr), involving these same parties. They were denial Awards.

It is clearly evident this claim must also be denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 6th day of October 1966.

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