

Award No. 15011

Docket No. MW-15580

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Benjamin H. Wolf, 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 or otherwise permitted individuals outside the scope of the Agreement to perform the work of renewing street, highway and/or road crossings at Smyrna, Georgia, on July 13, 14 and 15, 1964, and at Elizabeth, Georgia on July 28, 1964. (Carrier's File E-201-6 E-201).

(2) The Carrier further violated the Agreement when it assigned or otherwise permitted individuals outside the scope of the Agreement to perform the work of removing ballast from the track at Smyrna, Georgia, on July 27, 28 and 29, 1964.

(3) Foreman E. W. Rhodes, Machine Operator W. H. Meek and Track Laborers G. M. Henry, G. Beard and James Ward, Jr., each be allowed forty-eight (48) hours' pay at his respective straight time rate because of the violations referred to in Parts (1) and (2) 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:

Mr. H. B. Lewis
Division Engineer
L&N Railroad Co.
Chattanooga, Tennessee

"August 6, 1964
1-23

Dear Sir:

Claim is hereby made for the following named Track Department employes, with seniority as shown for each man, that they each be paid for 8 hours on each of the dates listed, account H. R. Free, or other contractor, and his or their employes, assigned the work of the renewal of street or road crossings at grade at Smyrna, Ga. or Elizabeth, Ga., or at any other location, where management has indulged itself in these planned, willful violations of the Maintenance of Way Agreement of May 1, 1960, as revised and amended:

E. W. Rhodes, Foreman—Rank 1—February 15, 1943
G. M. Henry, Laborer—Rank 6—March 11, 1947

cated on excuses rather than on reason or a fair application of the effective Agreement.

Management has authority to acquire needed equipment to perform its Maintenance of Way work and there is a rather large group of employes on the Chattanooga Division, who are qualified to operate such machinery and others who are awaiting their opportunity to perform work on and become qualified in the operation of any and all types of machines.

Kindly advise therefore, if you will allow the claim.

Yours very truly,
/s/ W. P. Gattis
W. P. GATTIS
General Chairman

WPG:hs
cc: Mr. J. B. Clark

The Director of Personnel, who saw no basis for the claim, declined same on October 7 in the following manner:

LOUISVILLE AND NASHVILLE RAILROAD COMPANY
Office of Director of Personnel
Louisville, Kentucky

October 7, 1964
E-201-6
E-201

Mr. W. P. Gattis, General Chairman
Brotherhood of Maintenance of Way Employes
Nashville, Tennessee

Dear Sir:

Your letter of October 1, file 1-23, concerning claim that employes named be paid for 8 hours each day July 13, 14, 15, 27, 28, 29, 1964, on account of a contractor renewing street, highway or road crossings at Smyrna or Elizabeth, Georgia.

It is our position that Rule 2(f) permits the company to contract work when it does not have the necessary equipment laid up or available to do the work. The claim is, therefore, respectfully declined.

Yours truly,
/s/ W. S. Scholl
Director of Personnel

The agreement between this carrier and its employes represented by the Brotherhood of Maintenance of Way Employes, effective May 1, 1960, is on file with the Board and by reference is made a part of this submission.

OPINION OF BOARD: This claim involves the interpretation and application of a rule in the Agreement which permits Carrier to contract out work which otherwise would be performed by its own forces. The Agreement provides:

"Rule 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."

Carrier hired a contractor to renew street or road crossings at Smyrna and Elizabeth, Georgia. The work consisted of stripping away old paving material and ballast to the bottom of the track ties, refilling the track with new ballast and then applying hot-mix paving material, and smoothing and compacting it with a small roller.

It was contended by the Employes that Carrier had the equipment and the forces to do the work and that Rule 2(f) did not apply. The Carrier denied it had the equipment laid up and available for use or that it had laid off forces available and able to do the work.

Aside from the assertion by the Organization that Carrier had such equipment in use or could have readily purchased it, there is no evidence that Carrier had equipment laid up. Even if the Organization had proved, not merely asserted, that Carrier had such equipment in use, it would not have proved thereby that Carrier had such equipment laid up. Moreover, Carrier denied it had such equipment available. Carrier is not required to purchase equipment such as is involved here to avoid contracting out work. (Awards 13966, 10715).

With regard to available forces, the Organization contended that Carrier abandoned its original stand that it did not have forces laid off adequate to do the work. The Organization asserts that under Rule 2(f) Carrier is obliged to prove that it did not have both equipment and men before it may contract out the work.

Aside from the fact that Carrier continued to deny that it had forces sufficient both in number and skill with which the work could have been done, the interpretation placed by the Organization on Rule 2(f) is strained. The Organization insisted that the Rule required proof that both conditions, lack of men and equipment, had to be proved. We think this is opposite to the intention expressed by the Rule. The rule requires that when there are not both men and equipment available the work may be contracted out. The sense is that if Carrier has both the men and equipment it ought to use them to do the work. If either is missing it does not have both, and may then contract the work.

Under the Organization's interpretation, if Carrier had the men but not the equipment, it may not contract the work out. Presumably, the Organization would expect Carrier to hire or buy the equipment. If the situation were the other way around, Carrier would be expected to find the men and hire them. While the language permits such an interpretation, it does not require it. We have frequently held that where two interpretations are possible, we should not choose the one which would lead to an absurd result.

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 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 denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION**

**ATTEST: S. H. Schuly
Executive Secretary**

Dated at Chicago, Illinois, this 6th day of December, 1966.