

Award No. 15054

Docket No. MW-15640

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Don Hamilton, 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 forces outside the scope of the Agreement to perform the work of stripping out old ballast from tracks, road crossings, and/or switches and of renewing road crossings at grade and/or unloading rail. (Carrier's file E-201-6 E-201.)

(2) Truck Drivers Oscar Stevens and A. W. Parris and Backhoe Digger Operators W. H. Meek and J. H. Burke each be allowed pay at their respective straight time rates for an equal proportionate share of the total number of man hours consumed by outside forces in performing the work referred to in Part (1) of this claim. (Claim is retroactive to 60 days from 8/18/64 — date of claim presentation.)

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

"August 18, 1964
1-23

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

Dear Sir:

Claim is hereby made that Oscar Stevens and A. W. Parris, Truck Drivers, and W. H. Meek and J. H. Burke, Backhoe Digger Operators, each be paid at the straight time rate of their respective classifications for an equal number of hours at the straight time and overtime rate, account H. R. Free, a contractor, and his employes, or any other contractor and his or their employes, performing work of stripping out old ballast from tracks, road crossings or switches belonging to the L&N Railroad Company, or renewing road crossings at grade or unloading rail.

to Maintenance of Way employees. The Awards referred to are MW-11751, MW-12178 and MW-12179.

The principles, rules and factual situations involved in those Awards are either identical to or very similar to the case here involved and there can be no dispute that these Awards do establish a precedent under the Agreement now in effect and the rules involved herein.

In view of all the related facts, the rules cited and the circumstances involved, I must respectfully request that this claim be allowed in its entirety.

Yours very truly,

/s/ W. P. Gattis
W. P. Gattis
General Chairman

WPG:hs"

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

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.

CARRIER'S STATEMENT OF FACTS: At the outset, Carrier submits that the claim is improperly before the Board. The claim as filed with Carrier's Division Engineer on August 18, 1964, is attached as Carrier's Exhibit AA. Carrier calls attention to the fact that the claim is a blanket one in that it fails to specify dates, locations or time involved. This was called to the attention of the General Chairman in the Chief Engineer's letter of September 11, 1964, attached as Carrier's Exhibit BB, which was in reply to the General Chairman's letter of August 25, 1964, attached as Carrier's Exhibit CC. The General Chairman was not satisfied with the decision contained in the Chief Engineer's letter of September 11, and appealed the claim to Carrier's Director of Personnel on October 27, as shown by the attached Exhibit DD. The claim was declined on November 4, Carrier's Exhibit EE.

(Exhibits not reproduced.)

OPINION OF BOARD: The issue to be resolved in this dispute is the same one which was litigated in prior cases involving the same parties. Those cases resulted in denial awards 11085, 11289, 13979, 14122, 14820, 14967 and 15011.

There is no substantial difference between the previous cases and the one at bar. Therefore, we will deny the claim.

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 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 14th day of December 1966.