Award No. 15734
Docket No. MW-16311

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, 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 use of outside forces (Hunt Brothers Contracting Company) to make track changes and to construct other tracks in the West End Yard at Atlanta, Georgia was a violation of the Carrier's Agreement with its Maintenance of Way Employes.

[Carrier's file E-201-6, E-201]

(2) Foreman A. U. Sherman, Track Laborers B. Hawkins, W. F. Powell, G. L. Payne, N. M. Miller, J. T. Wiseman, J. L. Summers, M. Stephens, R. L. Stevens, N. E. Ethridge and J. T. Harris each be allowed pay at his respective straight-time rate 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.

EMPLOYES' STATEMENT OF FACTS: The Carrier assigned employes of the Hunt Brothers Contracting Company, who hold no seniority rights under the Agreement, to perform the work of building, hanging, modifying, relocating and repairing tracks in the West End Yard at Atlanta, Georgia.

The claimants' seniority rights are "frozen" on the seniority district which includes the territory where the subject work was performed. They were available and fully qualified to perform all of the subject work, using equipment which the Carrier had "laid up."

Claim was timely and properly presented and handled by the employes 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: Carrier found it necessary, in order to provide the service demanded by its patrons, to modify its industrial

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

Dear Sir:

Yours of September 14, file 1-23, concerning claim on behalf of employes named in my letter of May 12, 1965, that they be paid account of Hunt Brothers Contracting Company being used in the work of making changes and constructing tracts [sic] in West End Yard, Atlanta, Georgia.

As you were advised in recent conference, we are still of the opinion that Rule 2(f) permits the handling as was given and, therefore, the claim was again respectfully declined.

Yours truly,

/s/ W. S. Scholl
Director of Personnel"

A copy of the effective rules agreement between carrier and its maintenance of way employes is on file with the Board and by reference it is made a part of the submission.

OPINION OF BOARD: This claim arises out of Carrier's assignment of certain work involved in the modification of its West End Yard at Atlanta, Georgia, to a contractor whose employes hold no seniority under the effective Agreement between the parties. Employes contend that Carrier violated the Scope Rule of the Agreement by contracting with an outside party to perform the necessary track work instead of assigning such work to its own employes with seniority under the Agreement.

Carrier contends that during the time that the work was performed by the outside contractor, no employes of the Track Department were laid off on Carrier's W & A Sub-Division. It is the Carrier's position that the work of modifying the industrial tracks in the Yard could not be further delayed and that it was necessary to engage the services of the outside contractor in accordance with past practices and pursuant to Rule 2(f) of the applicable Agreement which provides as follows:

> "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 record reflects that there were no employes laid off in the seniority district involved, but Employes point out that there is no evidence that Carrier lacked the necessary equipment "laid up" with which to perform the disputed work. Accordingly, Employes assert that Carrier has failed to show that the exception contained in Rule 2(f) is applicable because both of the conditions set forth there did not exist.

In the first instance, Carrier declares that Employes have raised an issue not previously raised on the property by suggesting that Carrier did not satisfy both conditions set forth in Rule 2(f) at the time the disputed work was performed by the outside contractor. We cannot agree as consideration of both Rule 1 and Rule 2 of the applicable Agreement is implicit in Statement of Claim.

As to the merits of the instant claim, this Board recently considered a similar dispute between the same parties, which also involved the interpretation and application of Rule 2(f) of the applicable Agreement. The Employes in the earlier dispute also asserted:

". . . That the Rule required proof that both conditions, lack of men and equipment had to be proved . . ." Award 15011

We find persuasive and controlling in the instant claim, the following language from the Opinion of Board in our Award 15011:

"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 chose the one which would lead to an absurd result."

Employes further contend that Carrier must show that no eligible employes were laid off throughout Carrier's entire system. However, Rule 4 of the Agreement confines the seniority rights of employes to their respective seniority districts. Awards 11088 and 10982.

In view of the foregoing, we find that the exception provided in Rule 2(f) was available to the Carrier in this instance. Therefore, the claim will be denied.

FINDINGS: The Third Dvision 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 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 July 1967.

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