Award No. 16629
Docket No. MW-17331

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

LOUISVILLE & 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 cutting right-of-way and trimming trees on Homestead Spur on September 11, 12, 13, 14, 15 and 16, 1966 to forces outside the scope of the Agreement. (System Files E-201/1-12)

(2) Track Foreman S. Langston and Track Laborers G. E. Miller, W. D. Andrews, J. Gaston, E. L. Cunningham, W. O. Belmar and C. Gibson each be allowed eight (8) hours' pay at their respective time and one-half rates and forty (40) hours' pay at their respective straight time rate because of the violation referred to above.

EMPLOYES' STATEMENT OF FACTS: On Sunday, September 11 and on September 12, 13, 14, 15 and 16, 1966, the work of cutting brush and trimming trees on Homestead Spur was performed by employes of the Carter Construction Company, who hold no seniority rights under the Agreement.

The claimants have established seniority rights on the seniority district where the subject work was performed. They were available and fully qualified to perform all of the subject work.

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: The "Homestead Spur" is four miles long, and is located on carrier's Evansville Division. Trees and underbrush had grown along the right-of-way to the extent that it created a safety hazard and had to be trimmed.

Carrier did not have forces available to do the work; there were no furloughed employes, and those who were working worked at least forty hours per week. As a matter of fact, the density of the growth was the result of carrier not having available forces that could be spared to do the work. Carrier therefore contracted the work as provided for by Rule 2(f) of the agreement.

Employes alleged that the agreement was violated and filed claim in favor of Foreman S. Langston and six laborers.

Copies of pertinent correspondence exchanged in connection with the file are attached and identified as Carrier's Exhibits AA through EE.

There is on file with the Third Division a copy of the current working rules agreement and it by reference is made a part of this submission.

(Exhibits not reproduced.)

OPINION OF BOARD: For six consecutive days starting on Sunday, September 11, 1966, employes of a contractor performed the work of cutting brush and trimming trees on Homestead Spur; the work is of a kind within the Scope of the Agreement. Carrier claims it did not violate the Agreement by contracting the work out because it did not have sufficient forces laid off to perform the work, thus that the work was properly performed under the exception in Rule 2(f) to the reservation of work in the Scope Rule.

Rule 2(f) provides:

> "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 did not claim that it lacked adequate laid up equipment to perform the work. However, Organization did not deny on the property that Carrier did not have forces laid off in sufficient number and skill to do the work. Organization argues that Rule 2(f) is intended to operate as an exception to the reservation of work only if there is proved lack of both equipment and men.

We do not agree; we said in Award 15011 (Wolf) in regard to the same question between the same parties as here:

> "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 the 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."

We hold to that reading of Rule 2(f).

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 by the Carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of October, 1968.

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