

Award No. 16733

Docket No. MW-17579

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David H. Brown, 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 the work of erecting a chain link fence around the parking lot at Gate 1, South Louisville Shops yard to forces outside the scope of its agreement with its Maintenance of Way employees. (System file No. 1-9/E-201-9.)

(2) Messrs. E. Denney, E. T. Beechum and O. Nunn 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.

EMPLOYES' STATEMENT OF FACTS: Beginning on January 16, 1967, the Carrier assigned the work of erecting a chain link fence around the parking lot at Gate 1, South Louisville Shops yard, to the Hartlage Fence Company, whose employees hold no seniority within the scope of the Carrier's agreement with the Maintenance of Way employees. The aforementioned work entailed setting steel posts in concrete at the required intervals, securing the chain link fence material to the posts and stringing three (3) strands of barbed wire above the chain link fencing.

The claimant B&B employees have customarily and traditionally been assigned to perform work of this character and were available, qualified and willing to have done so in this instance.

Claim was timely and properly presented and handled by the Employees 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 contracted with the Hartlage Fence Company to install a chain link fence around a parking lot on

Carrier's property at South Louisville, Kentucky. The Carrier did not have any bridge and building employes available on the Louisville Division to do the work and it, therefore, contracted the work as provided for by Rule 2(f) of the working rules agreement. The employes alleged that the work could not be properly contracted and filed claim in favor of Messrs. Denney, Beechum and Nunn, who had regular assignments, and were working at least 40 hours per week, for the amount of hours consumed by the contractor. Carrier saw no basis for the claim and it was declined.

Correspondence exchanged in connection with the claim is shown by the attached exhibits.

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: On January 16, 1967 Carrier contracted to Hartlage Fence Company the job of erecting a chain link fence around a parking lot at Carrier's facilities at South Louisville, Kentucky. This claim was made on behalf of the three employes named in the record, such claim being based on assertions that like work had previously been performed by B&B forces.

The asserted facts are true — work that might properly have been assigned to the Organization herein involved was contracted out in the instant case, and such work had been done on numerous previous occasions by affiliated craftsmen.

But standing athwart the road to recovery in this case is Rule 2 (f) of the Agreement between the parties. It 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."

In its submission before this Board, the Brotherhood offers assertion of fact and grounds of recovery which were at no time urged on the property. We must ignore them and decide the issue as it was there handled. Awards 5469, 6657, 13741, 13777 and many others.

The initial denial of the claim by Division Engineer M. A. McGee was grounded on Rule 2 (f): "... we have not cut off men." There Claimants failed to join the issue, instead conceding there were no laid off forces.

Claimants have failed to prove the inapplicability of Rule 2 (f), an explicit exception to the Scope Rule governing their right to the disputed work. The claim must 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 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;

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 31st day of October 1968.