Award No. 16953
Docket No. MW-17788

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

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, beginning on September 6, 1967, it assigned the work of "stripping out crossing at Third Avenue North, Nashville, Tennessee and installing ties, rails, crossing boards and also asphalt paving in the Nashville Terminal area" to outside forces. (System File 1-25/E-304-11)

(2) Foreman Roy E. Mabry, Back-Hoe Operator Charles C. Smith and Laborers W. Myers, Ben Evans, W. A. Martin, J. L. Springer, S. Lee, Tilman Carter, A. L. Prowell, A. W. Mathis and Jake Williams 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: The Carrier contracted with the Carter Construction Company to strip out crossings at Third Avenue, North, Nashville, Tennessee and to install ties, rails, crossing boards and asphalt paving in the Nashville Terminal area. The Nashville Terminals, together with the Nashville Division, are under the jurisdiction of Division Engineer J. W. Leinard.

The contractor's forces do not hold any seniority within the agreement controlling here. The work was started by the contractor's forces on September 6, 1967, at which time there were approximately forty (40) track department employes furloughed on the Nashville Division. The work in question is of the character which has been traditionally assigned to and performed by the Carrier's track subdepartment employes.

The qualifications of the claimants to perform work of this character has not been questioned by the Carrier. The availability of equipment has not been questioned. Nor has the Carrier questioned the sufficiency of forces laid off in this case. The Carrier's only defense has been that there were no employes

cut off in the Nashville Terminals, but conceding that there were at least 40 employes laid off on the Nashville Division.

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 contracted with the Carter Construction Company of Nashville, Tennessee, to do certain track work in that City which needed to be done. Carrier did not have forces laid off in the Nashville Terminal to do the work, so the work was contracted as provided for by Rule 2(f).

Employes alleged that the agreement (which is on file with this Division and by reference is made a part of this submission) was violated, and filed claim for Foreman R. E. Mabry, a back-hoe operator, and nine laborers, all of whom are Nashville Terminal employes, and were working at the time. Carrier saw no basis for the claim and it was declined. Correspondence exchanged in connection with the claim is shown by the attached Carrier's Exhibits A through H.

(Exhibits not reproduced.)

OPINION OF BOARD: The disputed work is typically that of the Maintenance of Way craft, but this is another in a line of cases involving these parties and wherein Rule 2(f) of the Agreement is used by the Carrier for its authority to contract the work to parties not covered by the Agreement.

Rule 2(f) is as follows:

> "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's defense is based on the fact that there were no laid off employes within Claimants' seniority district at the time the dispute work was done. This fact is conceded by Petitioners who nevertheless contend that since there were laid off employes in an adjoining seniority district the Agreement was violated.

There is a fatal inconsistency in the position assumed by Petitioners, for if the Agreement was violated because work was contracted when men were available in an adjoining district to perform the same, then those senior employes in such district who were available are the only proper claimants.

This claim will be dismissed because, under the undisputed facts, no proper claimants are before this Board.

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

Claims dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 12th day of February 1969.

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