

Award No. 16963  
Docket No. MW-17578

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

David H. Brown, Referee

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES  
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 Watchman's building at South Louisville Shops yard to forces outside the scope of its agreement with its Maintenance of Way employees. (System File: 1-9/E-201-9)

(2) Messrs. J. I. Smith, J. C. Murrell, T. W. Holman and R. Short 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.

**EMPLOYEES' STATEMENT OF FACTS:** The claimants, Assistant B&B Foreman J. I. Smith and B&B Carpenters J. C. Murrell, T. W. Holman and R. Short are regularly assigned within their respective classes to the B&B gang at South Louisville Shops with an assigned work week extending from Monday through Friday (Saturdays and Sundays are rest days).

The Carrier assigned the work of erecting a sheet metal building to Steel Builders of Louisville. The contractor's employees, who hold no seniority within the scope of the Agreement, began erecting the aforementioned building on Sunday, January 22, 1967.

The claimants, who have customarily and traditionally been assigned to perform work of this character, were available, qualified and willing to have done so in this instance if the Carrier had so desired.

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 was in need of a watchman's building at its shops at South Louisville, Kentucky. It did not have B&B employees to perform the work, as they were all needed on other jobs, and all were working at least 40, if not more, hours per week. The current working rules agreement provides for the contracting of work when there are not forces laid off, sufficient both in number and skill, with which the work may be done. In this case sufficient forces were not laid up (as a matter of fact, there were none), so a contractor was awarded the job.

Employees claimed that the agreement was violated and filed claim for claimants as shown. 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:** This dispute involved the same parties and essentially the same facts as prevailed in our Award No. 16733, wherein we denied the claim on the basis that Carrier had a good defense under Rule 2 (f) of the Agreement. For the reasons more fully set forth in such award we will deny the instant 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 Employees involved in this dispute are respectively Carrier and Employees 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

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 20th day of February 1969.