Award No. 16990
Docket No. MW-17818

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Morris L. Myers, 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 repairing and surfacing track at Mile 219 on the Henderson Sub-Division at Pembroke, Kentucky, to outside forces.

(2) The Carrier further violated the Agreement when it assigned the work of repairing crossing and installing ties, rails, crossing boards and asphalt in a road crossing at Mile 224 on the Henderson Sub-Division near Pembroke and Hopkinsville, Kentucky, to outside forces.

(3) Foreman R. L. Teague, Back-Hoe Operator C. E. Teague and Laborers J. Dock, J. D. Blakemore, H. Burse, Jr., C. R. Hanks, C. D. Strain, W. K. Sherrod and W. J. Rivers each be allowed pay at their respective straight time rates for an equal proportionate share of the total number of man-hours consumed by the outside forces in performing the work referred to in Parts (1) and (2) of this claim. (System File 1-12/E-201-18.)

EMPLOYES' STATEMENT OF FACTS: The Carrier contracted with the Carter Construction Company to perform the work of repairing and surfacing track at Mile 219 on the Henderson Sub-Division and to perform the work of repairing crossing and installing ties, rails, crossing boards and asphalt in a road crossing at Mile Post 224. The contractor's forces do not hold any seniority within the agreement controlling here. The work was started on August 14, 1967.

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 Henderson Sub-Division, but conceding that there were at least 40 employes laid off on the Evansville 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 needed certain track work done at Mile 219 and Mile 224, near Pembroke, Kentucky, which is on the Henderson Sub-division Seniority District of the Evansville Division. Carrier did not have forces laid off, sufficient both in number and skill to do the work, so contracted with the Carter Construction Company of Nashville, Tennessee, to do the work, which consisted of repairing and surfacing track at Mile 219 and repairing a crossing at Mile 224.

Employes claimed that the contracting violated the current working rules agreement (on file with your Division and by reference made a part of this submission) and filed claim for Foreman R. L. Teague, Back-hoe operator C. E. Teague, and seven laborers, all of whom were working, with the exception of Laborer C. R. Hanks, who died in May of 1966.

Carrier saw no basis for the claim and it was declined. Correspondence exchanged in connection therewith is shown by the Carrier's Exhibits A through I.

(Exhibits not reproduced.)

OPINION OF BOARD: In August, 1967, the Carrier contracted with the Carter Construction Company for the repair and surfacing of track at Mile 219 of the Henderson Subdivision, and for the repair of a crossing and the installation of ties, rails, crossing boards and asphalt at a road crossing at Mile 224 of the Henderson Subdivision. The employes of Carter Construction Company held no seniority under the effective Agreement between the parties here involved.

It is alleged by the Organization that this work was within the scope of work as set forth in Rule 1 of the Agreement and that the work involved should have been performed by employes of the Carrier represented by the Organization. The Carrier does not deny that the work contracted to Carter Construction Company would have been within the scope of work under Rule 1 were it not for the provisions of Section 2(f) of Rule 2 (hereinafter called Section 2(f)) which Section states 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."

There concededly were no employes laid off on the Henderson Subdivision. Nor is there a denial by the Carrier that there was adequate equipment laid up with which the work could have been done.

The Organization asserts that both conditions — namely, no adequate equipment laid up and no forces laid off — must exist in order that the Carrier

may properly contract out work. However, a long line of Awards have held otherwise and there is no reason not to follow them. (See Awards 13979 (Williams), 14820 (Lynch), 15011 (Wolfe), 15734 (Ives), 15755 (Harr), 15952 (Lynch), 16629 (House), and 16630 (House).

The Organization also contends that Rule 2(f) was not satisfied by virtue of the fact, not denied by the Carrier, that there employes in seniority divisions other than the Henderson Subdivision who were laid off at the time the subject work was contracted out. Therefore, according to the Organization, since Rule 1 defining the scope of work has system-wide application, Section 2(f) must also be afforded system-wide application. The Organization points out that Rule 10 of the Agreement would have permitted the Carrier to have transferred the furloughed employes from other seniority districts to the Henderson Subdivision to perform the work that was contracted out.

The Carrier meets this contention by pointing out that Rule 4 of the Agreement sets forth each seniority district and that it limits the seniority rights of the employes to their respective districts. Furthermore, the Carrier asserts that Rule 10 may **permit** under certain circumstances, the transfer of employes from one seniority district to another, but does not **require** it.

We believe that the Carrier is correct in its position. Awards Nos. 11085 and 15734, in which Robert Boyd and George Ives were the Referees, respectively, held that Rule 4 was applicable and did not require the Carrier to transfer furloughed employes in one seniority district to another seniority district when work was contracted out. Although it is true that neither Award referred to Rule 10, that Rule in its present form was in existence at the time the dispute arose which led to Award No. 15734. Furthermore, it is clear from the terms of Rule 10 that it affords the Carrier the **right** to transfer employes from one seniority district to another under given facts and circumstances, but does not place an **obligation** on the Carrier to do so.

The same is true of Section 1 of Article III of the National Agreement dated February 7, 1965 upon which the Organization relies. Even if that Agreement were applicable to this dispute, a question which we need not and do not here decide, it would avail nothing to the Organization, for it, like Rule 10, permits, but does not require, the Carrier to transfer employes from one seniority district to another under given situations.

For the above-stated reasons, the claim will 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; 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 20th day of February 1969.

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