



Award No. 17013

Docket No. MW-17836

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John B. Criswell, 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 Agreement was violated when the work of installing ties and surfacing track at Parry, Tennessee, was assigned to forces outside the scope of the Agreement. (System file E-201-12/1-16)

(2) Section Foreman J. T. Ward and Section Laborers L. H. Patton, B. E. Tears, J. W. Roan, W. D. Allen, B. J. Russell, F. W. Phillips, Andrew Wright, Clifton Sawyer, C. W. Owen and Douglas Abernathy each be allowed pay at his respective pro rata rates of pay for an equal proportionate share of the total number of man hours expended by outside forces in the performance of the work referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The claimants established and held seniority within their respective classes. Claimant Ward was the regularly assigned foreman on Section Gang No. 5.

On or about August 7, 1967, the work of installing cross ties and surfacing track at Parry, Tennessee, was performed by employees of the Carter Construction Company and of the Smith & Son Construction Company. The contractors' forces hold no seniority within the scope of the Carrier's agreement with its Maintenance of Way forces.

On September 27, 1967, the Carrier issued a notice that Section Gang No. 5 would be abolished at the close of the work period on Friday, September 29, 1967. As a result of the abolishment, Claimant Ward was required to work in a lower pay-rated classification in a mechanized gang. The laborers involved were absorbed by two other gangs.

Work of this character had customarily and traditionally been assigned to and performed by the Carrier's track department forces and the assignment thereof to outside forces was in violation of Rule 1 which reads:

"Subject to the exceptions in Rule 2, the rules contained herein shall govern the hours of service, working conditions, and rates of

was urgent need for the passing track extension, the work could not be further delayed so the six positions were abolished and contractors were hired. When the positions were abolished, Foreman Ward went to work in a mechanized gang and the five laborers were assigned to two other gangs.

Employes filed claim on the basis that the agreement of May 1, 1960 (which is on file with your division and by reference is made a part of this submission), was violated when the contractors performed the work, and filed claim not only for the Foreman and the five laborers who had bid on the job, but also for F. W. Phillips, Andrew Wright, Clifton Sawyer, C. W. Owen, and Douglas Abernathy, all of whom were working on regular positions, and who did not bid on the jobs at Parry.

Carrier saw no basis for the claim and it was declined. Correspondence exchanged in connection with the claim is shown by the attached Exhibits A through G.

(Exhibits not reproduced.)

OPINION OF BOARD: This dispute involved the same parties and essentially the same facts as prevailed in our recent Award 16733, wherein we denied the claim on the basis that Carrier had a good defense under Rule 2(f) of the agreement. For reasons more fully set forth in that 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 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

The Contract 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 25th day of March 1969.