

**NATIONAL RAILROAD ADJUSTMENT BOARD****THIRD DIVISION**

Nathan Engelstein, 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 track maintenance, tie renewal and other track work on Track No. 1 at East Louisville, Kentucky and at other locations on the Louisville Division to forces outside the scope of the Agreement.

(2) Cut-back Track Foreman R. E. Hall be allowed, in addition to payments received, eight (8) hours' pay at the foreman's straight time rate for each day that outside forces performed the work referred to in Part (1) of this claim.

(3) Track Laborers A. Cox, A. H. Bell, B. Harper, J. Downs, G. L. Brown and L. E. Barnes each be allowed, in addition to payments received, eight (8) hours' pay at their respective straight time rate for each day that outside forces performed the work referred to in Part (1) of this claim.

**EMPLOYEES' STATEMENT OF FACTS:** Beginning on November 14, 1966 and continuing through the summer of 1967, track maintenance, tie renewal and other track work on Track No. 1 at East Louisville, Kentucky and at other locations on the Louisville Division was performed by employees of the Marvin Vanhorn Construction Company, none of whom hold any seniority rights under the Agreement.

The contractor's forces consisted of one foreman and a varying number of laborers (usually six). Mr. W. J. Borden, a cut-back foreman, worked with the contractor's forces as a laborer. The Carrier also furnished and delivered all of the necessary materials used in the performance of said work and likewise provided all necessary equipment (trucks, crawler crane, swing crane, back hoe, tie remover and tie inserter), together with operators thereof.

The claimants have established seniority rights on the seniority district where the subject work was performed. They were available and fully qualified to perform all of the subject work.

larly assigned positions full time in the highest rank their seniority entitled them to work, and they have suffered no loss in compensation.

In view of the circumstances involved, we see no basis for the claim, and it is therefore declined. We believe if you will refer to Award 15011 of the Third Division of the National Railroad Adjustment Board, you, too, will agree there is no basis for the claim.

Yours truly,

/s/ W. S. Scholl  
Director of Personnel"

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"LOUISVILLE AND NASHVILLE RAILROAD COMPANY  
Office of Director of Personnel  
Louisville, Kentucky  
February 17, 1967

Mr. Jack Benson  
Brotherhood of Maintenance of Way Employes  
Nashville, Tennessee

Dear Sir:

Our letter of January 12, 1967, relative to the claim of R. E. Hale and six laborers for pay at their respective rates of pay, on account of the Marvin Vanhorn Construction Company servicing tracks and installing new ones, Louisville, Kentucky.

This matter was discussed in conference on February 15, 1967, at which time we stated it is still our position that there is no basis for the claim and it must, therefore, stand as declined.

Yours truly,

/s/ W. S. Scholl  
Director of Personnel"

Nothing further was heard from the claim until President Crotty's letter of October 11, 1967, advising that he intended to file an ex parte submission.

Copy of the effective working rules agreement between carrier and its maintenance of way employes is on file with the Board and by reference is made a part of this submission.

**OPINION OF BOARD:** During the latter part of 1966, Carrier had some Maintenance of Way work in its Louisville, Kentucky Terminal performed by employes of the Marvin Vanhorn Construction Company. The employes of this contractor did not hold seniority rights under the Agreement.

Claim is made on behalf of Cut-Back Track Foreman R. E. Hall and six named Track Laborers that Carrier violated the Agreement when it made work arrangements with a contractor to service track, remove old ties, switch ties, and install new ones.

Brotherhood maintains that the section of track upon which work was performed is owned by the L. & N. Railroad Company and has always been maintained by employees of that Carrier who hold seniority on the L. & N. Railroad and are covered by the Maintenance of Way Agreement. It contends that since the Vanhorn Construction Company employees do not hold seniority on the L. & N. Railroad and that Claimants were not given an opportunity to bid on any of the positions under Rules 14 and 15 and Assignment Rule 16 of the May 1, 1960 Agreement, their seniority was ignored and they are entitled to compensation at their respective rates of pay.

Carrier denies the claim with the assertion that Claimants' seniority rights had not been ignored. It points out that Claimants were assigned to full time positions and suffered no loss of compensation because the contractor performed the work claimed. Furthermore, it argues that there were no cut-off employees holding seniority on the Track Department of the Louisville Division and therefore, the work was performed in accordance with Rule 2(f) of the Agreement which provides that the Railroad Company may contract work when it does not have adequate equipment laid up and forces laid off sufficient in number and skill with which the work may be performed.

The issue in this case has been before the Third Division Adjustment Board on numerous occasions. We follow a long line of awards including numbers 16629, 16630 and 16733 and deny the 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

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 18th day of April 1969.