



Award No. 19013

Docket No. MW-15246

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Don Hamilton, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when, on May 28, 1963, it assigned or otherwise permitted other than Track Department employees to perform the work of cleaning tracks leading to the turntable at Vicksburg, Mississippi (Carrier's case No. 291).

(2) Section Laborer W. Mason be allowed twenty-four (24) hours' pay at his straight time rate because of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: On May 28, 1963, the work of cleaning the tracks leading to the turntable at Vicksburg, Mississippi was assigned to and performed by Mechanical Department employees who do not hold any seniority rights under the provisions of this Agreement.

The work consisted of loading the sand, dirt and other debris which had accumulated in and around the tracks and then transporting the debris to another area where it was unloaded.

The work of maintaining and/or repairing the Carrier's tracks, which includes the cleaning thereof, is work of the nature and character that has been customarily and traditionally assigned to and performed by the Carrier's Track Department employees.

The claimant, who was laid off from the section gang assigned to Section No. 33, Vicksburg Yard, was available, willing and could have efficiently and expediently performed the subject track cleaning work, had the Carrier so desired.

The Agreement in effect between the two parties to this dispute dated September 1, 1934, together with supplements, amendments, and interpretations thereto is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: On May 28, 1963, the work of removing sand, dirt, and debris from in and around the tracks leading to the

turntable, within the confines of the engine terminal at Vicksburg, was assigned to Mechanical Department laborers working under the schedule of rules with the International Brotherhood of Firemen and Oilers, Roundhouse and Shop Laborers.

The local chairman of the Brotherhood of Maintenance of Way Union took exception to the work assignment alleging it was work accruing to Maintenance of Way employes. A claim was progressed for three day's pay in behalf of a furloughed track laborer, W. Mason. The Company declined the claim at each level of appeal.

The agreement between the parties dated June 1, 1962, is by reference made a part of the Statement of Facts.

OPINION OF BOARD: In this case, the Maintenance of Way employes rely upon a Letter of Agreement and Understanding dated February 17, 1937. The Carrier argues that that letter applies to work performed on the main line at Cairo Junction, Illinois. Pursuant to proper third party notice being given in accordance with *Transportation-Communication Employees Union vs. Union Pacific Railroad Co.*, 385 U.S. 157 (1966), the International Brotherhood of Firemen and Oilers prepared an ex parte submission for consideration in this case. In that submission, they urge that the Letter of Understanding dated February 17, 1937, "was specifically confined to Cairo, Illinois". The Firemen and Oilers allege that the work which constitutes the subject matter of this dispute is the exclusive work of employes subject to their Agreement.

We are of the opinion that when a third party notice is given and a submission is received from said third party that it should contain sufficient facts, law and argument to constitute a prima facie case for their intervention. Having so intervened and met the basic burden of proof to permit such intervention, it then becomes the duty and burden of the original petitioner to defend against and overcome the allegations of the petition in intervention.

In this case, the Firemen and Oilers first argue that this Division has no jurisdiction to handle this dispute. The record herein indicates that this dispute has been timely and properly processed to this Board and the argument in regard to lack of jurisdiction is summarily rejected.

The Firemen and Oilers next argue that the procedures established by this Division for the handling of third party disputes constitutes a denial of due process of law in regard to said third parties. These disputes have long been a source of difficulty for the various Boards, but a procedure has now been adopted which permits the third parties to be heard and we believe the procedure now utilized by this Division is in accordance with due process of law and that the rights of the third parties are being protected under said procedure. Therefore, we reject as not well taken the Firemen and Oilers' argument that they have been denied due process by this Board.

We believe that in this case the Maintenance of Way employes have failed to meet the burden of proof necessary to overcome the allegations raised by the Firemen and Oilers which are, in most respects, supported by the argument of the Carrier. Therefore, 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 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 violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 11th day of February 1972.