NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19803
Docket Number MW-19793

Frederick R. Blackwell, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Burlington Northern Inc. (Formerly Spokane, Portland &
(Seattle Railway 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 dismantling the roundhouse at Vancouver, Washington to M. Bloch and Company, Inc. (System File 360 F/MW-84 (c) - 5/7/71).

(2) Furloughed Carpenters R. L. Salzer, W. C. Garrett, Carpenter Helper T. R. Winn, Jr. and B&B Employes D. Wright, W. Ericksen, G. Ditmer, L. Kramer, A. West, B. Kincheloe, R. Wells, L. Walker, Cutter L. Banning; Machine Operators O. Wells and L. Huot each be allowed pay at their respective straight time rates for an equal proportionate share of the total number of man hours expended by outside forces in the performance of the work referred to within Part (1) of this claim.

OPINION OF BOARD: Claim is that Carrier violated the Agreement when it permitted M. Bloch & Co. to dismantle a fire-damaged roundhouse and carry out the related clean-up and leveling work. Carrier's defense is that the roundhouse had been sold and was no longer the property of the Carrier.

The parties in addition raise several procedural issues; however, we find no merit in these issues and no reason to discuss them except for the one dealing with time limits. Carrier argues that, since December 1, 1970 was the date of its sale agreement with Bloch & Co., this was the date of the occurrence on which the claim is based; accordingly, the Organization's filing of claim on February 19, 1971 was beyond the 60 day time limits. Petitioner says that the dismantling work began on December 22, 1970 and that this is the date of the occurrence underlying the claim. We conclude that the claimants were not involved in the signing of the agreement and, therefore, could not be affected by the agreement until work thereunder actually commenced. By this test the claim was timely filed and its merits are before us.

Carrier asserts that the fire-damaged roundhouse, and damaged locomotives, cabooses, and other equipment located therein, was beyond repair and of no further use to Carrier in its operations as a common carrier. Consequently, the Carrier sold the building and equipment (scrap and debris) to M. Bloch & Co. on an "as is, where is" basis for $4,000, and Bloch agreed to dismantle,salvage, and otherwise remove the scrap from Carrier's premises. The written agreement of sale shows that title of the building and all salvagable material passed to Bloch and Co. on December 1, 1970.

Petitioner asserts that the sale of the roundhouse was a subterfuge and that the dismantling work performed by Bloch was reserved to Maintenance of Way Employees by Rule 40 of the Agreement. Petitioner also notes prior Awards holding that a change of ownership of property ends the employees rights to protected work, but urges that these Awards are inapplicable to the instant dispute because of the following text in Rule 40.

> "All work on Operating property, as classified in this Agreement, shall be performed by employes covered by this Agreement, unless by mutual agreement between the General Chairman and designated Representative of Management, it is agreed that certain jobs may be contracted to outside parties account inability of the railroad due to lack of equipment, qualified forces or other reasons to perform such work with its own forces. It is recognized that where train service is made inoperative due to conditions such as, but not limited to, washouts or fires, individuals or contractors may be employed pending discussion with respect to such mutual agreement."

We have carefully studied the above text but we do not find therein any basis for Petitioner's asserted distinction. We read the text as speaking of work performed on property owned or controlled by Carrier and for a purpose related to the operation of common carrier service. Further, although the text seems quite broad, relatively speaking, we do not see anything in the text, either express or implied, to indicate that the protected work provisions continue in effect, as between the employees and Carrier, after Carrier parts with title to the property giving rise to the work. We shall therefore deny the claim on the basis of prior Awards which hold that, where ownership of a building passed from Carrier, the work thereon was no longer comprehended by the Agreement. Award 10826 (Miller) and Award 9, Special Board of Agjustment No. 498 (Whiting).

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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 20th day of June 1973.