

The Third Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

(Brotherhood of Maintenance of Way Employes  
PARTIES TO DISPUTE: (  
(Seaboard System Railroad

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

(1) The Carrier violated the Agreement when it assigned former Louisville and Nashville Railroad Maintenance of Way Employes headquartered at Nashville, Tennessee to construct twenty (20) track panels for placement on the Florence-Savannah Seniority District of the former Seaboard Coast Line Railroad [System File 37-SCL-83-21/12-30 (84-42) R].

(2) Because of the aforesaid violation, each employee named below, who has established seniority rights in the Track Subdepartment, Group A, Florence-Savannah Seniority District and who were holding regularly assigned positions on Section Force 5516, headquartered at Savannah, Ga., be allowed pay at their respective straight time rate for an equal proportionate share of the two hundred twenty-four (224) man-hours expended in the performance of the subject work.

Claimants:

J. L. Brannen	Id. 153949	Foreman
E. H. Sams	Id. 145640	M. O. Class III
E. Scriven	Id. 144865	Trackman
L. Bacon, Jr.	Id. 146341	Trackman
J. Ford	Id. 146658	Trackman
J. Wright	Id. 149823	Trackman
L. Young	Id. 153940	Trackman"

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The event that caused this claim occurred when the Carrier received twenty (20) track panels from the Louisville and Nashville Railroad (L&N) for use on its wrecker derricks. The panels were constructed by Maintenance of Way Employees of the L&N.

The Organization contends that the work at issue traditionally and historically has been assigned to and performed by its employees. Accordingly, it argues that the Carrier was required to reach an understanding with the Organization before it took the action at issue. It relies upon Rule 1, Scope; Rule 2, Contracting; Rule 3, Subdepartments; Rule 4, Seniority Districts; Rule 5, Seniority Groups and Ranks; and Rule 6, Establishment of Seniority.

The Carrier, in its simplest terms, contends that it has the right to purchase prefabricated track panels from any other source available. It contends that the Scope Rule applicable here does not obligate the Carrier to purchase separate component parts to be assembled by its forces. It maintains that it may purchase what it considers to be new equipment. Therefore, this purchase was not a sub-contracting matter and, accordingly, it was not required to serve the Organization with a notice of intent.

Clearly, had the construction of the twenty panels occurred on the Carrier's property, the basic Scope Rule contentions of the Organization would have considerable merit. Numerous Awards have held that seniority rights to work activity is not legitimized "until the material or equipment upon which the work is to be performed is once delivered to the Carrier."

The issue here is whether the panels may properly be considered to be new material or component parts. If they are new materials, then their purchase is not prohibited by the subcontracting provision of the Agreement.

After careful consideration, the Board finds that the panels are new materials and that the Carrier may avail itself of new methods and products in order to operate in an efficient and economical manner. In this case, it obtained a finished part that would become a part of its track system. We find no rule prohibiting this action, in light of all the particular facts presented on the property.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:   
Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of June 1988.