

PUBLIC LAW BOARD NO. 2556

Award No. 9

Case No. 9

Docket No. MW-175

Case No. 10

Docket No. MW-182

Case No. 11

Docket No. MW-183

Parties Brotherhood of Maintenance of Way Employees  
to and  
Dispute Southern Railway Company

Statement

of Claim: Claim on behalf of C. F. Capps, et al., for eight hours straight time and four hours over time each date due to contractor unloading material and laying ribbon rail between M.P. 323 & 325 on specified dates in August/September, 1978.

Claim on behalf of C. F. Capps, et. al., for equal proportionate share of man hours worked by contractor account unloaded ties with work train, installed ties, double spiked curves and applied tie plates between M.P. 323 and 325 on #2 main track on 10/9-13/78.

Claim on behalf of C. F. Capps, et. al., account contractor used to apply rail anchors and tie plates on #2 main line track between M.P. 323 and 325 on 9/5-8, 11-14/78.

Findings: The Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated October 17, 1979, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

Carrier, advised the General Chairman, that it was necessary to contract out upgrading track between Kanesprings, Tennessee and Daisy, Tennessee, on the Cincinnati, New Orleans, and Texas Pacific Railway Company (CNO&TP). Carrier advised that:

"In order to handle existing traffic it is necessary to upgrade this section of No. 2 track by performing the following work:

1. Lay 5000 Track Feet of 132 # welded curve-master rail, M.P. 324.3 to 323.4.
2. Unload 23,500 tons of ballast and raise and surface 7.84 track miles of existing track.
3. Install 2,800 new treated cross ties.
4. Drive rail along 500 linear feet of track in order to stabilize the track.
5. Drive rail and/or sheet piling along 1,450 Linear Feet of track in order to provide a ballast guard.

It is necessary that this work be started at the earliest possible date and completed as soon as possible.

All of the regularly assigned employees are engaged in work that cannot be deferred. All of the Carrier's equipment is in use on other projects and could not be diverted to this project.

There are no furloughed employees that could be recalled.

For the reasons previously stated, it is necessary to contract the work of upgrading No. 2 track between Kanesprings and Daisy, Tennessee."

Rule 59 - Contracting Out - reads:

"(a) In the event Carrier plans to contract out work within the scope of the applicable schedule agreement, the Carrier shall notify the General Chairman in writing as far in advance of the date of the date of the contract and transaction as practicable and in any event not less than 15 days prior thereto.

(b) The General Chairman, or his representative, request a meeting to discuss matters relating to the said contracting transaction, the designated representative of the Carrier shall promptly meet with them for that purpose. Said Carrier and organization representative shall make a good faith attempt to reach an understanding concerning said contractor, but if no understanding is reached Carrier may nevertheless proceed with said contracting, and the organization may file progressive claims in connection therewith.

(c) Nothing in this Rule 59 shall effect the existing rights of either party in connection with contracting out. Its purpose is to require the Carrier to give advance notice, and, if requested, to meet with the General Chairman or his representative to discuss and if possible, reach an understanding in connection therewith."

Following the July 24, 1978 notice the parties, pursuant to request by the General Chairman, met and discussed the matter on or about August 9, 1978. No understanding was reached in conference concerning the contracting transaction involved.

In order for the Employees to here prevail they must offer probative evidence to prove that the work contracted out is of the type that by tradition, custom and practice has been performed exclusively by employees covered by their agreement. Unfortunately, they offered no such evidence. The Employees simply assert that the work of the type performed by the employees of contractor has heretofore been performed by Carrier's own Maintenance of Way employees. Such assertion is too vague and vacuous to represent evidence.

Nevertheless, Carrier asserted and such was not denied, that the Maintenance of Way employees have not performed such work. Nor was it denied that the manner in which the work complained of was contracted out, was in compliance with the agreement as well as the long established and recognized practice thereunder. The long standing practice on this property is that certain track and other work has been contracted out in an emergency, as well as other situations, where shown that the existing MofW force is engaged in other maintenance or construction work which cannot be deferred, and where there are no furloughed employees available to perform the work or where it is simply beyond the capacity of the existing force to perform the work within the time allotted.

The record reflected 11 instances in which upgrading projects of similar character had been contracted out in recent years in identical circumstances. There, as here, notice had been given the Organization of Carrier's intent to contract out the work. In each such case the Employees on the seniority district involved were fully employed while the work was in progress and, as here, were not adversely effected in

any manner whatsoever. Claims were not presented in connection with those contracted out transactions.

Therefore, the Board will, on the record before it, conclude that Carrier complied with the provisions of Rule 59. We find that Carrier's action in contracting out the work was in compliance with the controlling agreement and the established and recognized practice thereunder. These claims have no merit and will be denied.


Award: Claims denied.



A. D. Arnett, Employee Member



R. S. Spenski, Carrier Member



Arthur T. Van Wart, Chairman  
and Neutral Member

Issued at Wilmington, Delaware, April 18, 1981.