

(R-53-278-10)

AWARD NO. 16

CASE NO. 19

SPECIAL BOARD OF ADJUSTMENT NO. 280

PARTIES : The Brotherhood of Maintenance of Way Employees
TO :
DISPUTE : St. Louis Southwestern Railway Company

STATEMENT OF CLAIM:

"Furloughed section laborers Leroy Walker, Sidney Johnson, T. A. Kelley, Lewis Tyler, Elvis Rodgers, L. J. Stewart, Charlie Booker, A. Richmond, L. C. Richards, Robert Fox, W. H. Brown, Toney Brown and D. W. Chaffin, to be paid an equal number of man hours used by Nichols Construction Company constructing track breaking out of main line connecting with Storage Company."

FINDINGS:

In the year 1955, the Stuttgart Storage Corporation, Stuttgart, Arkansas, a grain storage concern, requested permission to construct a 300 foot service track on carrier's right-of-way to serve that industry. The industry was granted an easement enabling it to construct, own and maintain this track on carrier's right-of-way. The Storage Company elected to have carrier construct the track with its forces and paid carrier the total cost of construction of the 300 foot track. Upon completion the Storage Corporation owned the 300 foot track and the carrier was to annually refund to the industry a sum to be determined by the number of revenue cars shipped to and from the industry, until such time as the amount refunded reached an agreed figure, or a period of five years elapsed, at which time title to the track would vest in the carrier.

On February 1, 1957, the carrier and the Storage Company executed a standard industrial track agreement under which the Storage Company paid the railroad rental for use of the track and elected to maintain the 300 foot track at its own expense.

During the latter part of 1957 the Storage Company, in order to facilitate unloading and loading of cars, asked that they be permitted to extend the track then serving them, 300 feet on the south end and 346 feet on the north end, a total of 646 feet, which would necessitate the carrier moving turnout location northward and moving or re-constructing 220.2 feet of its track, including turnout. An easement was granted the Storage Company enabling them to construct, maintain and use this additional 646 feet of service track at their sole expense.

The industry elected to have this portion of the track constructed by a private concern, W. H. Nichols and Company, Inc. Relocation of the 220.2 feet of track, including turnout at north end of service track, was performed by the carrier's forces. Upon the completion of the additional 646 feet of trackage, the new portion was owned by the industry. This track would revert back to the carrier after the carrier would pay to the industry the sum of \$4,212.00 of revenue received on each car shipped or received or until a period of five years elapsed, after which title to the trackage would be vested to the carrier.

The employees state that the carrier has violated the Scope Rule of the Agreement and the Seniority Rule of the Agreement. The employees offered in evidence, letters from various track foremen which contained information concerning the building of leased trackage. The employees state that the leased trackage is on the right-of-way of the carrier.

Since the work of constructing this 646 feet of trackage was agreed to between the carrier as lessor, and the Storage Corporation as lessee, to be paid by the lessee, it did not constitute work of the carrier and the employees of the carrier have no claim for its performance, as the carrier has the right to lease such property and grant an easement thereto, even if it be on the right-of-way of the carrier, and ownership of the land would revert back to the carrier. (Award 6649) The Carrier has been bound over a period of years by orders issued by the United States Railroad Administration and the Interstate Commerce Commission, in cases like the one before this Board. The United States Railroad Administration and the Interstate Commerce Commission, in cases like the one before this Board. The United States Railroad Administration, on March 26, 1918, issued its General Order No. 15, and Supplement No. 1 to this order of December 5, 1918, stating what the carrier could do for an industry as regards to trackage leased by an industry, and the Interstate Commerce Commission is governed by Section 3 of the Interstate Commerce Act, as amended on February 28, 1920. These Rules and Regulations set forth what a carrier must do in such an instance as the one before us, stating that the railroads would generally pay for and maintain the track from switch to clearance point, and that the industry would pay for and maintain the remainder of the track, including any portion on the right-of-way beyond the clearance point.

From the evidence produced at the hearing, this has been the practice followed by this carrier. Past practice does not give to this organization the right to construct a track that has been leased to an industry where the industry under the terms of its lease asked for the right to contract out, and pay for, the construction of that portion of the track leased and the carrier agrees that the industry may do so. Cases have been brought to the attention of this Board by the carrier and the organization where the carrier has agreed with the industry to construct the track and then the industry to pay the carrier for said construction. This work has been performed by the carrier's employees. However, there are other instances where the carrier has leased trackage to an industry and the industry has agreed to construct, repair and maintain said track and the industry has contracted out this work and the employees of the carrier have not been given this work. The evidence did not bring out any established past practice that this organization is entitled to the work outlined in this claim, nor does the Scope Rule give to these employees the exclusive right to perform this type of work. Therefore, the claim will be denied.

AWARD: Claim denied.

(s) Thomas C. Begley
Thomas C. Begley, Chairman

(s) A. J. Cunningham
A. J. Cunningham, Employee Member

(s) M. L. Erwin
M. L. Erwin, Carrier Member

Dated: May 19, 1960