

FIRST DIVISION
NATIONAL RAILROAD ADJUSTMENT BOARD

39 South La Salle St., Chicago 3, Illinois.

The First Division consisted of the regular members and in addition Referee Angus Munro when award was rendered.

PARTIES TO DISPUTE:

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

CHICAGO RIVER AND INDIANA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of unnamed engineers on each shift 7:00 A. M., 3:00 P. M. and 11:00 P. M. for one day's pay each at their regular rate for January 1, 1947 and all subsequent days, because the Healy Construction Company handled its own business with its own employes on tracks located on property under lease to that industry at approximately 46th and Morgan Streets, Chicago, Illinois.

CARRIER'S STATEMENT OF FACTS: The Chicago River & Indiana Railroad Company is a switching line located entirely in the City of Chicago and serving the Union Stock Yards territory and the Central Mfg. District. Locomotive Engineers in yard service perform yard and industrial switching and are subject to the rules of the working agreement effective May 24, 1928. There is no road service.

The S. A. Healy Company has contract with the Sanitary District of Chicago and is engaged in work in connection with the construction of the proposed Sanitary District intercepting sewer. The shaft is located at a point about $\frac{1}{4}$ th mile west of Halsted Street and $\frac{1}{8}$ th mile north of 47th Street in the Union Stock Yards.

Arrangements were made by the S. A. Healy Company to lease certain land and tracks from the Carrier to enable it to properly perform its work.

The following excerpt from lease effective February 1, 1946 between the S. A. Healy Company and The Chicago River & Indiana Railroad Company shows the extent to which the Healy Company control the facilities mentioned:

"Said Railroad Company, in consideration of the payments, covenants and agreements of the said Lessee, hereinafter mentioned, does hereby lease to said Lessee for the term of Two (2) years from February 1st, 1946 unless sooner terminated, on Thirty (30) days' notice, as hereinafter provided, the premises situated in the City of Chicago in the County of Cook and State of Illinois, described as follows, viz.:

An irregular shaped parcel of land located in the City of Chicago, County of Cook and State of Illinois, containing 183,800 sq.

ft., together with tracks thereon, shown marked "AB", "CDEFG", "CKLM", "LN", "DK", "ET", and "FS", all as shown marked in heavy white lines on the C.R.&I.R.R. Co.'s blueprint No. M-125, dated May 18, 1946, attached hereto and made a part hereof."

Attached is plat marked "Exhibit A" showing land and tracks of The Chicago River & Indiana Railroad Company leased to the S. A. Healy Company. The additional property occupied by the S. A. Healy Company outside this area, we understand, is leased from other owners.

The two tracks involved in this dispute are served from the west by a lead track of this Carrier and are identified as tracks 12 and 13 on the plat showing property occupied by the Healy Company which is responsible for their maintenance.

The north most track of the two tracks involved (known as No. 12) is used for outbound cars loaded with muck from digging operations in connection with the construction of the tunnel.

The south most track (known as No. 13) is used for inbound empty cars for muck loading. About 7:00 A. M., 3:00 P. M. and 11:00 P. M. on days required, the Carrier's yard crews place empty cars on track, No. 13, from the lead at the west end thereof for loading by the Healy Company. A small Diesel locomotive owned by the Healy Company and manned by its employes couples to the east end of these cars and pulls them eastward through a crossover to a tipple at which point they are loaded with muck from narrow gauge dump cars of the Healy Company. After the standard gauge equipment cars are loaded at the tipple they are shoved westward by the Healy Diesel locomotive and placed on track No. 12, for outbound movement. During the handling of the cars by the Diesel locomotive of the Healy Company, neither the cars nor the Diesel engine move outside the confines of the area or tracks under lease to and under the control of the Healy Company. The crews of this Carrier subsequently enter track No. 12 from the west and pull the outbound loaded cars west off track No. 12.

The crews of this Carrier are not permitted on the two tracks referred to except as may be necessary to deliver cars to the plant or remove cars therefrom.

The employes claim that Healy Construction Company employes perform switching on The Chicago River & Indiana Railroad Company property which should be performed by the Carrier's employes and contend it is an infringement of their seniority when employes of the S. A. Healy Company handle their employer's business on the property that the Healy Company has under lease. They also claim violation of Rule 2000 of the Carrier's special Rules.

POSITION OF CARRIER: The Carrier will show that:

1. The claims are not valid and are not supported by the rules.
 2. The Carrier's position is supported by Awards of this Division:
1. **THE CLAIMS ARE NOT VALID AND ARE NOT SUPPORTED BY THE RULES.**

The current agreement respecting working conditions applying to The Chicago River & Indiana Railroad Company locomotive Engineers contains seniority rules which read in part as follows:

"Article V

Seniority Rule

Engineers' seniority rights shall be handled by Card System.

1. A card is furnished all regular engineers on which he will give his choice of run, and file card with the Roundhouse

clerk not later than Saturday, 10:00 A. M. preceding Mondays.

2. The Board changes every Monday for the purpose of advancing engineers to their choice of runs.
3. If card shows no choice of runs, or all his choice of runs have been taken by older men, he will be placed on the best open run preceding his number on the Seniority list."

These rules merely provide that as between two or more engineers the senior shall have preference of runs. The most favorable construction to a claimant that can be placed on this article is that it gives him the right over junior engineers with respect to work made available for locomotive Engineers by his employer.

As the employes of the S. A. Healy Construction Company do not handle the business of this Carrier but are restricted to the handling of the business of their employer on their employer's property, no one is deprived of seniority or preference of runs as referred to in the rule quoted above.

Rule 2000 cited by the employes is one of a number of special rules of this Carrier issued for the information of its employes and the employes of foreign lines and was not reached by any agreement with the employes of this Carrier. It reads as follows:

"2000. No engines, other than those operated by the Chicago Junction Railway (The C.R.&I.R.R.Co. Lessee) will be allowed to make delivery of any cars to industries on private track in Chicago Junction Railway Territory".

The sole object of Rule 2000 is to preserve to this Carrier the right to serve these industries and obtain revenue for such service performed. It has no bearing on work done by industry forces on industry property that cannot be delegated by this Carrier to its employes and, therefore, has no significance whatsoever in this dispute.

None of the business handled by the Diesel locomotive on the property leased to and under control of the Healy Construction Company is the business of the Carrier nor could this Carrier handle such business without the request or authority of the Healy Company. Furthermore, this Carrier receives no revenue by reason of the work performed by the Diesel Locomotive of the Healy Company on its property.

It is the contention of the Carrier that seniority rights of employes are functional, not territorial, and may only be exercised in connection with such work as is delegated to them by their employer. The work in the instant case is work which this Carrier has no authority to delegate to its employes.

When the crews of this Carrier place the inbound empty cars on track 13, the designated receiving track of the Healy Construction Company on their leased property, the function of such crews and the obligations of this Carrier have been discharged and completed. Conversely, this Carrier can only delegate to its crews the handling of outbound loaded cars from track 12, the designated delivery track of the Healy Construction Company to this Carrier on their leased property. The transportation service for which this Carrier is compensated in its rates begins and ends at those tracks. The service performed by the Healy Construction Company with their Diesel locomotive is a plant service which is work that neither this Carrier, nor its employes have any right to perform.

The Diesel locomotive of the Healy Construction Company manned by its own employes in performing their plant service uses only tracks under lease to them on their leased property; consequently there can be no violation of the agreement between this Carrier and its employes.

There is no rule in the schedule for engineers which authorizes an allowance or pay for engineers when they are not used to perform service over a territory on which this Carrier is not authorized to operate; therefore, these claims are without question an attempt on the part of the Committee to obtain a new rule in a manner contrary to the provisions of Section 6 of the Amended Railway Labor Act. Therefore, the contention of this Committee should be dismissed and the claims denied.

As claims filed are for unnamed Locomotive Engineers on unspecified dates with the single exception of January 1, 1947, the attention of this Board is directed to the following award:

Award 11642, Trainmen vs. Sacramento Northern Railway.

In this case the following appears in the Findings:

"But that part of the claim for all Sacramento Northern trainmen is too broad and indefinite and is not susceptible of ascertainment. We do not propose to require the Carrier to search its records to develop claims for unidentified trainmen on unspecified dates."

2. THE CARRIER'S POSITION IS SUPPORTED BY AWARDS OF THIS DIVISION:

Attention of this Board is directed to the following Awards wherein similar circumstances prevailed:

Award 2608, Trainmen vs. D&RGW.

Claim of yardmen for one day's pay on account of the plant engine of the Amalgamated Sugar Company handling cars from one point to another within the trackage of the plant. Your Board denied the claim.

Award 5337, Trainmen vs. C&EI.

Claim of yardmen for a yard day each day that employes of industries performed yard switching with self-propelled machines and gas electric engines. Your Board denied the claim. The following appears in the Findings:

"In this case three senior yardmen claim they were entitled to certain yard service performed by the Victor Chemical Company's self-propelled locomotive crane and the American Manganese Steel Company's gas-electric engine.

The industrial plants of these two companies are located on or near a main lead track of the carrier. Both are served by tracks leading from the main lead track. All cars consigned to these companies are delivered to them and placed by carrier's crews on a nearby side track. As the contents of the cars are needed, the self-propelled machines of these two companies take them from the side track to the part of the plant where they are needed. In making these movements it is necessary at times to use a part of carrier's main lead track, there being plants to be served on both sides of it.

The record shows that carrier's locomotives can proceed upon the tracks of these companies no more than two car lengths because of the curvature of the tracks. All work done by the machines of these customers is for the sole benefit of their owners. Carrier has no contract or agreement to do this work and it is not shown that the carrier was under any obligation to do it. The fact that some of carrier's tracks are used is a circumstance to be considered but it is not a controlling factor. If the work done was inter-plant handling of cars as distinguished from yard switching, it is not yard work, irrespective of track ownership. The record shows that this work has

been treated as inter-plant handling by the Carrier and the companies for many years without complaint by the organizations.

A consideration of all the evidence, including the physical facts, the previous conduct of the parties, and the practical and economic considerations bearing upon the meaning of the schedule and its application to the facts, we hold the work in question was inter-plant movement of cars as distinguished from yard service."

Award 5834, Engineers and Trainmen vs. Midland Valley.

In this case, the Carrier leased certain tracks to the Southwestern Creosoting Company. Under the terms of the lease, all cars for the plant were to be delivered or received from tracks 1 and 2 which were just inside of the fence. Switching of cars within the industry grounds was made by self-propelled cranes operated by employes of the Creosoting Company. The Creosoting Company's crane was not permitted to go off of the leased property, and the Carrier's engines were not permitted to go inside of the fence except as may have been necessary to deliver cars to the plant or remove cars therefrom. Your Board denied the claim or protest making the following comment in the findings:

"The protested movements are made in the course of interplant operations of the Southwestern Creosoting Company and do not come within the contract of the employes."

The Carrier holds that the Healy Construction Company is fully within its rights in operating the Diesel Locomotive on the property leased to it by the Carrier to enable it to perform the service described and that such service is inter-plant handling of cars that cannot be considered as coming within the contract of the employes of this Carrier.

Your Board also has denied claims from Yardmen based upon the handling of cars to and from an interchange track by an industrial plant engine in instances where the designated point of interchange was located outside the property owned or leased by the plant involved and in connection with that broader issue, we would refer you to Awards 5127, 7894 and 7895.

CONCLUSION

The Carrier maintains that there is no basis for any claim that any provision of the Agreement was violated and that the jurisdiction of this Carrier does not extend to the work performed by the locomotive of the Healy Construction Company on tracks leased to that Company by the Carrier, nor does this Carrier receive any revenue for such service performed by the industry employes as the transportation service of this Carrier begins and ends at the delivery and receiving track of the industry and is not work that The Chicago River & Indiana Railroad Company nor its employes may perform.

The Carrier has shown that:

1. The claims are not valid and are not supported by the rules.
2. The Carrier's position is supported by Awards of this Division and urges the Division to deny these claims as it has denied similar claims in other disputes where a like principle was involved.

All matters referred to herein have been discussed with the representatives of the employes at conferences held on the property on January 22, 1948, and on February 19, 1948, in efforts to compose the situation. The Carrier desires that oral hearing be held in this case unless after reading the submission of the employes, it concludes to waive hearing.

EMPLOYES' STATEMENT OF FACTS: The Healy Construction Company was granted by lease, about April 1946, a portion of what is known as "backway yard" located at approximately 46th and Morgan Street. This company is in the process of constructing a tunnel or sewer for the Sanitary District of Chicago. Large quantities of muck removed from this tunnel is conveyed from underground to the central point described above by means of an elevator extending high above ground surface and under which empty gondola cars are set for loading. As each car is loaded it is shoved or pulled from under the elevator chute and replaced by another empty gondola. The empty gondolas are placed upon a track adjacent to this construction company by CR&I engine power and crews, and are removed from loading by the Healy employes with their engine. The loads in turn are set out by the Healy company and picked up by CR&I crews for disposal.

All of this work of spotting and removing cars is performed exclusively by Healy employes using either one of two sixty-five ton Diesel Electric locomotives. The number of cars loaded at this point in a period of twenty-four hours is approximately forty cars. The revenue received by the carriers for each car load removed is \$19.80.

The CR&I joint committees made formal protest to the management concerning this practice under date of January 1, 1947 (exhibit A). The management replied in part as follows: "The work performed by the Healy company is performed entirely on property leased by that company and neither this carrier nor its employes have any right or interest in such work."

The Joint Committees however notified the CR&I Sup't under date of September 8, 1947, that claims were being filed (exhibit B) and an identical copy was presented to General Manager McGraw under date of December 13, 1947 (exhibit C).

The matter involved has been acted upon by the BRT, BLE and BLF&E committees jointly throughout the entire proceedings up to this date.

It is our position that the carrier completely ignored the provisions of our work schedules when it leased this portion of its yard to this construction company without reserving to its yardmen and enginemen the right to perform this work which is now being performed exclusively by the Healy Construction Company employes to the detriment of CR&I yardmen and enginemen.

The schedule rules sustaining these claims are as follows:

Chicago Memorandum of Agreement covering yardmen employed by the Chicago Junction Ry.—Chicago River & Indiana Railroad.

Article 2, paragraph A

"Eight hours or less shall constitute a day's work."

Article 3, defining yard work

- (a) The following shall be considered yard work, shall be handled by yardmen and shall be compensated for at not less than yard rates.
- (b) The **switching** of all freight and passenger equipment operating exclusively within the switching limits.

Article 10 Seniority privilege

- (a) Seniority rights of yardmen will date from the time they enter the service continuous in yards or terminal where employed.

- (b) The right to preference of work and of promotion will be governed by seniority in service. The yardman oldest in service will be given the preference, if competent.

Schedule of wages and agreement covering Locomotive Firemen and Enginemen employed by Chicago Junction-Chicago River & Indiana Railroad.

Article (1)

"Eight hours or less shall constitute a day's work. All time worked in excess of eight hours of continuous service in a twenty-four hour period shall be paid for as overtime, on the minute basis, at one and one-half times the hourly rate, according to class of engine."

Article (7) Seniority

Firemen's seniority rights shall be handled by card system.

- (1) A card is furnished all regular firemen on which he will give his choice of run, and file card with the Round House Clerk not later than Saturday 10:00 A. M., preceding Mondays.
- (2) The board changes every Monday for the purpose of advancing firemen to their choice of runs.

Article (20) of Engineers Schedule

"Whenever electric or other power is installed as a substitute for steam, or is now operated as a part of their system on any of the tracks operated or controlled by any of the railroads, the locomotive engineers shall have preference for the position as engineer or motorman and the locomotive firemen for the position as fireman or helper on electric locomotive. But these rights shall not operate to displace any men holding such positions on the date of issuance of this order."

Schedule of Wages and articles of agreement between Engineers and Chicago Junction Ry.-Chicago River & Indiana Railroad.

Article (1)

"Eight hours or less shall constitute a day's work."

Article (5) Seniority Rule

Engineers seniority rights shall be handled by card system.

- (1) A card is furnished all regular engineers on which he will give his choice of run, and file card with the Round House clerk not later than Saturday, 10:00 A. M., preceding Mondays.
- (2) The Board changes every Monday for the purpose of advancing engineers to their choice of runs.

Article (10) paragraph (4)

"Engineers shall be placed on all engines handled outside of roundhouse lead track at combination switch, or in doing **switching** at the roundhouse coal dock."

Article (20)

"Whenever electric or other power is installed as a substitute for steam, or is now operated as a part of their system on any of

the tracks operated or controlled by any of the railroads, the locomotive engineers shall have preference for the position as engineer or motorman and the locomotive firemen for the position as fireman or helper on electric locomotive. But, these rights shall not operate to displace any men holding such position on the date of issuance of this order."

We wish to point out to your board that the term "switching" as used in article (3b) yardmen's agreement and in article (10) paragraph (4) of Engineers' agreement, necessarily includes spotting of cars in and removal of cars out of industries. In fact, the bulk of such "switching" on this carrier is industrial and consists of spotting cars in and removal of cars out of such industries.

There are no physical characteristics upon or within this industry that would hinder or prevent this carrier from spotting and removing such cars. Yet this construction company acquired two sixty-five ton Diesel electric locomotives to perform this work and the carrier receives the same revenue for not performing this work as it would receive if it did perform such work.

The right of its yardmen and enginemen to perform this work upon the property of this carrier is obvious from the language of the aforementioned schedules. We, therefore, wish to point out that the carrier was attempting to evade its obligation under these schedules in this specific instance when it leased this portion of its yard to a private industry and imposed upon that industry the burden of performing its own switching while the carrier retained benefit of the revenue derived therefrom.

We presume that the carrier will attempt to justify their position by contending that this is "inter-plant switching" and that as such they cannot be held liable for these claims. But, we point out the inadequacy of such contention by maintaining that **the carrier created this condition when it leased out this property.** We do not herein mean to imply that the carrier has no right to lease out its property nor that the private industry has no right to move or spot cars on its own tracks, but we do mean to emphasize that the carrier as lessor has the power to reserve such rights and in this specific instance it was, in duty, bound by virtue of our work schedules to make such reservations for the benefit of its yardmen and enginemen, **and therein lies the gist of these claims.**

We wish to direct your board's attention to the fact that the carrier took the initiative in bringing this case to the board despite the express intention of the committees to progress the matter further upon the property. This action practically thwarted any further efforts of the committees to arrive at an amicable understanding. (Exhibit D.)

As the committees has not seen or been furnished a copy of the management's ex-parte submission in this matter, they are not in a position to anticipate all the contentions which may be made or to attempt to answer those contentions at this time. We have made every effort to set forth all relevant argumentative facts, including documentary evidence in exhibit form, but as we do not know what the management will present, we reserve the right after being furnished a copy of the management's ex-parte submission to make such written answer thereto as we may deem necessary or proper.

Oral presentation is desired.

(Exhibits not reproduced.)

FINDINGS: The First 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 employe 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.

The parties to said dispute waived hereing thereon.

This case comes before the Division at the instance of carrier. The brotherhood pleaded the matter should be remanded to the property with proper instructions contending (1), negotiations had not been concluded on the property and hence the case was prematurely before the Board and, (2), claim herein had been consolidated below with certain other claims involving the same matter here involved, but that with reference to said other claims, brotherhoods not here before the Board were involved and therefore all claims should have been consolidated here.

Upon hearing hereof it was not disputed the writer of that certain letter identified as brotherhood's exhibit "D" was the chief operating officer within the meaning of Section 3, First (i), Railway Labor Act, as amended. We construe said exhibit as a final and definite refusal by carrier to further negotiate. With reference to the remaining point raised by the brotherhood it was agreed by the parties that decision herein would control the above mentioned other claims filed here by carrier, and that all claims were substantially alike in all material respects.

It is accordingly ordered by the Board that brotherhood's motion to reamnd be and it is hereby in all respects overruled and denied.

We will now discuss the case on its merits. Fortunately the material facts are not in dispute. Subsequent to the adoption of the schedule we are concerned with, carrier leased to Healy Construction Company, hereinafter called Healy, certain property more particularly described in carrier's exhibit "A". Healy had a contract with Chicago Sanitary District, hereinafter called District, for the construction of a sewer on said premises. The Healy operations were performed by having carrier spot an empty car on a track in being at the time the Healy lease went into effect. This track was within the leased premises and will be hereinafter called "inbound track". Healy would then, with the use of its equipment, pull said car onto a track constructed by it and load same.

Subsequent to the loading of said car, Healy would pull the car onto a track also in being at the time the aforesaid lease was entered into and would spot such car thereon. This track will be hereinafter called the "outbound track" and it too was within the leased premises. Carrier would then pick up the spotted car and depart with the same.

The brotherhood avers what was done by Healy on the inbound and outbound tracks constituted switching and spotting and hence was a violation of their schedule in that they were entitled to protect same.

With such theory we cannot agree. We think if a sustaining award is to be rendered it must be on the theory so ably and forcefully set out by Judge Swacker in Award 351 and in which the Judge lays down the general rule to be that the contract of employment carries with it, if not expressly, then by necessary implication, the covenant employes have the right to protect the work for which they are employed, else the contract is meaningless.

We must bear in mind the work performed on Healy tracks bears no relation to the matter we are considering. Nor must we overlook the fact the brotherhood does not complain of a movement other than spotting and switching. Thus it will be noted the brotherhood does not lay claim to have

the exclusive right to protect all work on either the inbound or outbound track. Under the claim as pleaded the brotherhood must establish two (2) acts in order to prevail, to wit: (1) spotting, and, (2) switching. We think it possible under the facts here before the Board, either one or the other of said acts may occur without the other. With reference to the act complained of on the inbound track we do not think Healy employes were engaged in spotting.

It is further ordered by the Board that such portion of claim herein as refers to work performed on the inbound track be and the same is hereby denied.

With reference to the act complained of on the outbound track, we think the same constituted spotting and switching.

It is further ordered by the Board that such portion of claim herein as refers to work performed on the outbound track be and it is hereby sustained.

AWARD

An award to be entered agreeable to the above and foregoing finding and opinion.

BY ORDER OF FIRST DIVISION
NATIONAL RAILROAD ADJUSTMENT BOARD

ATTEST: (Sgd.) J. M. MacLeod
Executive Secretary

Dated at Chicago, Illinois, this 10th day of August, 1951.

DISSENT TO AWARD NO. 14723, DOCKET NO. 23232

DISSENT OF CARRIER MEMBERS

The Findings and Award in Docket 23232 (which also cover Dockets 23233 and 23234) are based upon a misapprehension that the Carrier permitted the Healy Construction Company to perform spotting and switching of cars contrary to schedule agreements.

However, the facts are as follows:

The Healy Construction Company was under contract with the City of Chicago to construct a very large intercepting sewer in the southwest portion of the city and leased property from the Chicago River and Indiana Railroad Company and the G. H. Hammond Company, in the Union Stock Yards' territory for the outlet and disposal of muck as the digging progressed in the tunnel. The Healy Construction Company therefore became an industry, in the same sense as any other industry located on this railroad, or on any other railroad throughout the United States.

After lease was consummated the Construction Company rearranged and relaid tracks for their operation within the leased area and provided a small Diesel locomotive to take care of their operations.

The arrangement provided for the Carrier to deliver empty cars to the Industry on track No. 13 from which point the Industry's locomotive handled the cars to the mouth of the tunnel where they were loaded with muck removed from the tunnel. After loading was completed, the loaded cars were placed on track No. 12 (within the leased area) by locomotive of the Industry, from which point the Carrier's locomotive handled the cars for train dispatchments from the Union Stock Yards' territory.

This operation was in progress twenty-four hours each day and when loading was in process, the Industry's engine was required to hold on to the cars being loaded and move them at intervals as the loading progressed.

Such work, as was performed by the Healy Construction Company within the confines of the leased area, is universally understood to be intra-plant switching and in most instances actually required by the Interstate Commerce Commission, and is covered by tariff regulations, both state and national.

At no time did the C R & I and the Healy Construction Company enter into a contract as to the performance of the work by the Industry on the leased territory. The C R & I's only function was to lease the property to the Healy Construction Company for their industrial operation and is strictly in accord with what this Division has held many times to be proper.

In the last six paragraphs of his Findings, the Referee creates an inconsistent situation and confusion with regard to established and acknowledged practices under the laws and also agreements of the various organizations. For example, he states that the taking of the empty cars from track No. 13 after having been delivered to that track by the Carrier, and the return of the loaded cars to track No. 12 from which they are removed by the Carrier, is not in violation of the Agreement; but, that the placing of cars by the Industry's locomotive at the mouth of the tunnel was "spotting and switching". In one instance he states that what was done on the inbound and outbound tracks was proper, and in another statement he contradicts this statement by saying that what was done on the inbound track was proper but what was done on the outbound track was improper and finds "that such portion of claim herein as refers to work performed on the outbound track be and it is hereby sustained". No reasoning whatever can justify such a decision.

The Referee lays great stress on Award 351 by Judge Swacker—Employee's Statement of Facts reading in part as follows:

"The Louisiana & Arkansas Railway Company employed Gifford-Hill & Company, by contract, to do certain construction work in connection with the bridge being built over the Bonnet Carre Spillway, and in addition to haul dirt to fill in the Railroad Company's yards and widen dumps and elevating tracks for a system of yard tracks at Norco, Louisiana, for certain consideration agreed upon in contract, to be paid by the Louisiana & Arkansas Railway Company."

The Contractor there used two locomotives of their own to haul dirt from the pit to where it was unloaded on each approach to the bridge, using the main line of the L & A RR, a distance of from one to four and a half miles; also, hauling dirt to fill in the Railroad Company's yard and widen fills and elevating tracks for a system of yard tracks to serve the New Orleans Oil Refinery Company at Norco, La.

The case there decided has no more resemblance to the one here decided than the sun has to the moon. The contract here made, and the operations thereunder, were in strict accord with prior Awards of this Division, cited to the Referee, as follows: 2608, 5127, 5337, 5834, 7894, 13105, 13251, 13037, 13368, 13371, 13580, 13581, 13638, 13679, 13750; yet, when the Carrier has acted in the light of our Awards, we have it penalized by a Referee who has no conception of what he has done.

For these reasons we dissent.

T. L. Green
 Geo. H. Dugan
 O. E. Swan
 H. W. Burtness
 H. J. Reeser

Chicago, September 11, 1951.