

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Paul N. Guthrie, Referee**

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**

**THE DELAWARE AND HUDSON RAILROAD CORPORATION**

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

(1) The Carrier violated the Agreement when it assigned Motive Power Department employees to install and repair sand stoves on March 24, 1948, February 3, 1949, and on dates subsequent to January 14, 1951;

(2) The two (2) senior plumbers and the two (2) senior plumber helpers, holding seniority rights on the Susquehanna Division, each be allowed eight (8) hours' pay at their respective straight-time rates account of the violation of March 24, 1948;

(3) The three (3) senior plumbers, holding seniority on the Susquehanna Division, each be allowed eight (8) hours' pay at the straight-time rate account of the violation of February 3, 1949;

(4) Each of the plumbers and plumber helpers, holding seniority on the Susquehanna Division, be allowed pay at their respective straight-time rates for an equal proportionate share of the total man-hours consumed by employees of the Motive Power Department in performing the work referred to in part (1) of this claim on dates subsequent to January 14, 1951.

**EMPLOYEES' STATEMENT OF FACTS:** On March 24, 1948, February 3, 1949, and dates subsequent to January 14, 1951, Motive Power Department employees were assigned by the Carrier to perform the work of installing and making repairs to sand stoves on the Susquehanna Division.

Work of the above type has always, heretofore, been performed by Plumbers employed in the Maintenance of Way Department and working under the Maintenance of Way Agreement. Plumbers and Plumber Helpers, holding seniority rights on the Susquehanna Division, were available on the dates employees of the Motive Power Department were assigned to perform the service in question, and they could have been so used, had the Carrier so elected.

This very same question, under the very same effective agreement and involving this very same Carrier and Organization, was disposed of in Award

Any award rendered in this case which affects the rights of Shop Craft employees who have performed the work in the past will be invalid unless System Federation No. 35, Railway Employees' Department, A. F. of L., is given notice of hearing by the Adjustment Board in accordance with Section 3, First (j), of the Railway Labor Act.

Claim is not supported by agreement rules and practice thereunder and carrier respectfully requests that it be denied.

Claim in this case is the same as that in Case No. 13.50 M.W. (docket number not yet assigned) which was submitted to the Third Division on April 25, 1955.

Management affirmatively states that all matters referred to in the foregoing have been discussed with the Committee and made part of the particular question in dispute.

(Exhibits not reproduced)

**OPINION OF BOARD:** This case involves another claim with respect to the repair of sand stoves at Oneonta, New York. It is alleged by Petitioner that the Respondent Carrier improperly and in violation of the applicable Agreement assigned repair work on claim dates to Boiler Makers rather than to Plumbers of the Maintenance of Way craft and class.

The Carrier has contended in this proceeding that a matter of jurisdiction is involved in this case on the basis of the requirements of Section 3 First (j) of the Railway Labor Act as amended. In view of the Award made hereinbelow it is unnecessary to rule on this question.

The subject matter of the dispute in this docket has been before the Division on prior occasions. In particular, the Division has issued three prior Awards which bear directly upon the issue here presented; Awards 4754, 7390 and 7790. It is significant to note that Award 7790 dealt with the identical work at the same point, Oneonta, New York, as the instant case. It so happens that the events complained of in the instant case, in most particulars occurred prior to those involved in the case on which Award 7790 was made by this Division.

It is argued by Carrier member that the instant case should be dismissed on the ground that the Petitioner in submitting two claims to cover the same situation is splitting a cause of action in violation of well established principles. Perhaps technically this is not a splitting of a cause of action, but in practical terms it comes very close to being just that.

It seems more appropriate to take the view that the Division decided this matter in Award 7790, and that there is no basis for redéciding the matter here in the absence of a showing of manifest error, or of a substantial factual difference in the claim.

This finding makes it unnecessary to review the significance of Awards 7390 and 4754, both dealing with similar claims between these parties, except to point out that Award 7390 further supports the finding here made.

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

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees 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, subject to the following finding as to notice:

That the Agreement was not violated.

**AWARD**

Claim denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of **THIRD DIVISION**

**ATTEST: A. Ivan Tummon**  
**Executive Secretary**

Dated at Chicago, Illinois this 17th day of July, 1957.