

Award No. 8119
Docket No. MW-7739

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Norris C. Bakke, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

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 repair sand stoves on November 29, 1951 and December 3, 1951, at Oneonta, New York;

(2) The three (3) senior plumbers holding seniority rights on the Susquehanna Division, each be allowed sixteen (16) hours pay at their respective straight time rate account of the violation referred to in part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: On November 29, 1951, and December 3, 1951, Employees of the Carrier's Motive Power Department were assigned to perform the work of making repairs to sand stoves at Oneonta, New York, a point of work location on the Susquehanna Division.

Work of this type has always heretofore been performed by Maintenance of Way Plumbers and such class of employees were available upon the dates the Carrier used Motive Power Department employees to perform this repair work. Therefore, the Carrier could have used Plumbers to have performed this repair work, had they elected to do so.

This very same question, under the very same effective Agreement and involving this very same Carrier and Organization, was disposed of in Award 4754, Docket MW 4305. The only difference in the two cases is the actual point of work location and the dates involved. Therefore, the Docket covered by Award 4754, together with the Opinion, Findings and Award are, by reference, made a part of this submission.

The Agreement in effect between the two parties to this dispute dated November 15, 1943, together with supplements, amendments, and interpretations thereto are by reference made a part of this Statement of Facts.

POSITION OF EMPLOYEES: As pointed out in the Employees Statement of Facts, the issue before this Board has previously been decided by your Board in Award No. 4754. However, the Carrier has refused to recognize the principles enunciated in Award No. 4754, except to the one specific violation involved therein. Hence, it becomes necessary that the Organization burden

24, 1948, to March 12, 1948, these same forces erected two sand stoves and rebuilt the screens around these new stoves at **Oneonta, New York**, working a total of one hundred and twelve (112) man hours in setting up the new sand stoves and two hundred and twenty-three (223) man hours in rebuilding the screens around these stoves.

In view of the above, there can be no doubt that the work performed on November 29, 1951 and December 3, 1951, by three (3) employees of the Motive Power Department, that of repairing sand stoves at **Oneonta, New York**, was work customarily and ordinarily performed by Maintenance of Way Bridge and Building forces and coming under the Scope of the effective Maintenance of Way Agreement.

When our Brotherhood entered into an Agreement effective July 1, 1939, with the Delaware and Hudson Railroad Corporation, the B&B employees under the Scope of that Agreement were performing and continued to perform the type of work referred to in the instant claim. Hence, we contend that our right to perform this type of maintenance work was recognized by the Carrier since the date of our Agreement, July 1, 1939. Too, the Carrier has continued to recognize our jurisdiction during the subsequent years. Therefore, we hold the Carrier is now in error by assigning, in this instant claim, work recognized as coming under the scope of the effective Maintenance of Way Agreement and work which has customarily been performed by B&B forces. Employees of the Motive Power Department have no seniority rights under our effective Maintenance of Way Agreement and accordingly, they were permitted to perform work contractually belonging to other employees.

The plumbers in the Maintenance of Way Department on the Susquehanna Division were available for this work; they have the ability to perform such work and have customarily done so; and the performance of such work is unquestionably theirs.

We respectfully request that our claim be allowed.

It is hereby affirmed that all data herein submitted in support of our position have heretofore been presented to the Carrier and are hereby made a part of the question in dispute.

CARRIER'S STATEMENT OF FACTS: On dates of claim Shop Craft employees repaired sand stoves at Oneonta.

POSITION OF CARRIER: Claim in this case is the same as that involved in Case Nos. 2.51, 9.51 and 3.51 M.W. (docket number not yet assigned), carrier's ex parte submission dated June 20, 1955. Carrier submits the argument and evidence presented in that submission to support its position in the instant case.

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.

OPINION OF BOARD: No good purpose would be served by attempting to make any further refinements or distinctions in the subject matter of this dispute. It has been before us in almost identical claims disposed of by Awards 4754, 7390, 7790 and 8008. While different conclusions were reached in Awards 4754 and 7390, this referee agrees with the result reached in 7790 and 8008, and holds the claim herein should be denied.

In view of this conclusion it is unnecessary to pass on the jurisdictional question raised by the motion of the Carrier on file herein.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes 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; and

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 4th day of November, 1957.