Award No. 10537
Docket No. MW-9487

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION
(Supplemental)

Phillip G. Sheridan, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CENTRAL OF GEORGIA RAILWAY COMPANY

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

(1) The Carrier violated the effective Agreement and general understanding as to the application of same when, on April 27, 1956, it abolished the Mowing Machine Gang on the Savannah Division and assigned and/or permitted other than Machine and Cook Sub-department Employes to perform the work in connection therewith;

(2) Machine Operator G. P. Drake, Assistant Machine Operator J. H. Vaughn, Motor Car Operator J. A. Crawford and Cook H. Lockhart each be paid eight (8) hours' pay per day at their respective straight time rate from April 27, 1956, until the violation referred to in part one (1) of this claim is corrected;

(3) This machine Gang be re-established in accordance with understanding of January 8, 1953.

EMPLOYES' STATEMENT OF FACTS: Under date of January 8, 1953, the Carrier's Chief Engineer addressed the undersigned General Chairman as follows:

"Jan. 8, 1953.g

Mr. H. L. Padgett,
Gen'l Chairman,
Brotherhood of Maintenance of Way Employes,
10 E. 61st St.
Savannah, Ga.

Dear Sir:

With reference to claim presented in your letter of July 15, requesting weed burner operator rate of pay for certain employes who were called on to operate weed burners but who had not been assigned to this class of work:

It has been materially changed. The Employes have clearly failed to properly handle their claim now before this Board in accordance with the Railway Labor Act.

The Carrier further asserts that it has shown beyond any reasonable doubt that the claim in this docket is entirely lacking in either merit or agreement support and requests that said claim be denied.

All data herein submitted have been presented to the duly authorized representative of the Employes and are made a part of the particular question in dispute.

The Carrier reserves the right, if and when it is furnished with the submission which has been or will be filed ex parte by the Employes in this case to make such further answer as may be necessary in relation to all allegations and claims as may be advanced by the Employes in such submission, which cannot be forecast by the Carrier at this time and have not been answered in this, the Carrier's initial submission.

(Exhibits not reproduced.)

OPINION OF BOARD: The claim of the Claimant was set forth by the Claimant in his letter of June 20, 1956.

"STATEMENT OF CLAIM

1. That Carrier violated the effective agreement and general understanding as to application of same when, on April 27, 1956, they abolished the mowing machine gang on Savannah Division which was established by understanding reached with the Committee and Mr. S. L. Peek, Director of Personnel, and Mr. H. G. Carter, Chief Engineer, in conference January 8, 1953.

2. That Machine Operator G. P. Drake, Assistant Machine Operator J. H. Vaughn, Motor Car Operator J. A. Crawford and H. Lockhart, Cook, each be paid at their respective straight time rates each day or month this violation continues from April 27, 1956, until the matter is properly adjudicated.

3. That machine gang be re-established in accordance with understanding the Committee had with Mr. Peek and Mr. Carter, January 8, 1953."

From the outset, we are confronted with a jurisdictional question, the foregoing claim does not mention the fact that the subject work is being performed by persons other than those who come within the Agreement between the Carrier and Organization.

We are extremely reluctant to impose stringent provisions for the processing of claims but we must face reality in recognizing past precedents in the nature of decisions of this Board which hold that if the claim is substantially amended, it cannot be considered by this Board. This is in violation of Railway Labor Act and the awards of this Board prohibit it. See Awards 4346, 5077, 6692 and 10193.

In the instant case, the Organization elected to pursue its theory of Agreement violations as set forth in its original Statement of Claim, and in reliance thereon, the Carrier moved to defend or rebut this claim, the Carrier is not burdened to look at matters other than those contained in the original Statement of Claim in order to prepare a defense if it has one.

In the instant case, the Statement of Claim fails to mention that the work in question is being performed by or has been transferred to persons other than those subject to the Agreement between the Carrier and the Organization.

The evidence shows that the claim submitted here is not the one that was handled by the Carrier, there has been a failure to comply with Section 3 Frst (i) of the Railroad Labor Act as amended.

Therefore, this Division lacks jurisdiction to consider the claim as submitted.

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 dismissed for lack of jurisdiction.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 25th day of April 1962.