

Award No. 11599
Docket No. MW-10167

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

SOUTHERN RAILWAY COMPANY

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

(1) The Carrier violated the effective Agreement when it assigned the work of filling a Bridge at Mile Post 445. 1-A to the General Contractor whose employees hold no seniority rights under the provisions of the Agreement.

(2) Tractor Operators A. D. Keys and C. N. Brooks and DW-20 Operator H. C. Burkes each be allowed pay at his respective straight time rate for an equal proportionate share of the total man-hours consumed by the Contractor's forces in performing the work referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: Commencing on or about July 9, 1956, the work of filling a bridge at Milepost 455. 1-A was assigned to and performed by the Tri-State Sand Company whose employees hold no seniority rights under the provisions of this agreement. The work of filling bridges or trestles is work of the character that has been usually and traditionally assigned to and performed by the Carrier's Maintenance of Way and Structures Department employees. The Claimants were available, fully qualified and could have efficiently performed the above referred to work, had the Carrier so desired.

The Agreement violation was protested and a suitable claim filed in behalf of the Claimants. The claim was handled in the usual manner on the property and declined at all stages of the appeals procedure.

The Agreement in effect between the two parties to this dispute dated August 1, 1947, together with supplements, amendments, and interpretations thereto is by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: Rule 1 reads as follows:

(Exhibits not reproduced.)

OPINION OF BOARD: The nature of this claim is similar to the claim in Award 11598. Only minor factual differences exist. Here, Carrier entered into an agreement with Tri-State Sand Company "to install three 84-inch corrugated pipes, 94 feet in length, and to furnish all fill material, machines, equipment, labor, etc., necessary to complete the project, also to construct a fill over the pipes under the Carrier's tracks to take the place of the ballast deck trestle." Otherwise, it involves the same parties and the same agreement. Identical evidence is in the record of both Dockets. The parties filed single briefs to apply to both disputes.

We have discussed, in some detail, the position of the parties and the applicable principles of this Division in Award 11598. Our conclusion in this claim is identical with the conclusions and findings in Award 11598.

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 Carrier did not violate the Agreement.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 12th day of July 1963.