

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Martin I. Rose, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

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

(1) The Carrier violated the Agreement when it assigned forces employed by the Morrison-Knuteson Company to scale the side of a cut at Mile Post 159.5.

(2) Tractor Operators G. E. Plath and Reuben L. Robertson each be allowed pay at their respective straight-time rates for an equal proportionate share of the total man-hours consumed by the Contractor's Utility Tractor Operator in performing work on the project referred to in Part (1) of this claim.

(3) Bulldozer Operators A. R. Mikaelson, G. W. Payne, M. C. Thrasher, D. R. Hart and O. George each be allowed pay at their respective straight-time rates for an equal proportionate share of the total number of man-hours consumed by the contractor's Bulldozer Operator in performing work on the project referred to in Part (1) of this claim.

(4) Truck Drivers P. E. Rodriquez, L. Blanco, C. E. Sullivan, L. M. Sanchez, J. E. Straub, W. Boom, R. L. Coe, H. L. Nix, W. W. DeBeaord and F. S. Hart each be allowed pay at their respective straight-time rates for an equal proportionate share of the total number of man-hours consumed by the contractor's truck drivers in performing work on the project referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The facts in this dispute are exactly as they were presented in both the letter in which this claim was initially presented and in the letter of appeal; the truth or accuracy of which have been neither denied nor refuted. Said facts were presented as follows:

"EMPLOYEES' STATEMENT OF FACTS: All of the above named claimants hold seniority and are working in the proper class for which the claim is presented.

As will be noted, that rule merely names the classes of employees whose rates of pay, hours of service, and working conditions, are governed by the rules of the current agreement. It does not make any reference to work or to the specific duties that may be required by those classes of employees, nor does it set forth the duties that will be reserved to or that will be exclusively performed by the classes of employees named. As a matter of fact, throughout the life of the current agreement and preceding agreements, work of the magnitude and character here involved has never been considered exclusively reserved by the Scope Rule to employees covered by the current agreement. As evidence thereof there is attached as Carrier's Exhibit "C", a statement showing a partial list of grading and bridge work performed by contract during the years 1951 to and including a portion of 1955, to which no exception was taken by petitioner.

CONCLUSION

The claim in this docket is entirely lacking in either merit or agreement support and carrier therefore requests that said claim be denied.

All data herein submitted have been presented to the duly authorized representative of the employees 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 petitioner 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 petitioner 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: This claim arose out of the same contract job and presents a record and issues which are similar to those in Award 11846. On this basis, and for the reasons stated therein, we reach the same conclusions as in Award 11846 and deny this claim.

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 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; and

That the evidence does not establish that the Agreement was violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 15th day of November 1963.