

Award No. 11881
Docket No. MW-11463

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

William N. Christian, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
CHICAGO AND NORTH WESTERN RAILWAY COMPANY**

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

(1) The Carrier violated the effective Agreement when, in lieu of using its own employees in the operation of a weed eradicator for weed eradication work on the territories assigned to Roadmasters C. G. Stockwell, J. W. Hendrickson, A. F. Trautman and C. E. Miller, it assigned the work to the Chipman Chemical Company, whose employees hold no seniority rights under the provisions of this Agreement.

(2) Machine Operator Floyd Coaty be allowed pay at the weed eradicator operator's straight time rate for a number of hours equal to that consumed by the contractor's forces in performing the weed eradicator operator's work on the territory under the supervision of Roadmaster C. G. Stockwell.

(3) Machine Operators Adolph Overby, Durell Johnson, Howard Weiss and Gary McCulloch each be allowed pay at the Weed Eradicator Operator's straight time rate for an equal proportionate share of the total man hours consumed by the contractor's forces in performing the weed eradicator operator's work on the territory under the supervision of Roadmaster J. W. Hendrickson.

(4) Machine Operators Paul Foulon and Alfred Rask each be allowed pay at the weed eradicator operator's straight time rate for an equal proportionate share of the total man-hours consumed by the contractor's forces in performing the weed eradicator operator's work on the territory under the supervision of Roadmaster C. E. Miller.

EMPLOYEES' STATEMENT OF FACTS: The work of eradicating weeds upon this property has been traditionally and historically assigned to and performed by the Carrier's Maintenance of Way Department employees.

The claim is without merit and should be denied.

All information contained herein has previously been submitted to the employees during the course of the handling of this case on the property and is hereby made a part of the particular question here in dispute.

OPINION OF BOARD: Employees' contention that Carrier asserts a defense not raised on the property is without merit.

The issue is whether Carrier violated the effective Agreement by letting weed eradication work to an independent contractor. Weed eradication on this property has been traditionally, historically, and exclusively performed by Employees. Distinguish Award 6929 (Rader) where past practice justified letting the work to an independent contractor.

Carrier's defense is exception, based on claimed special skill required in view of the dangerous nature of the chemical involved, and further based on claimed special equipment required. Employees' position is that Claimants have sufficient skill and Carrier has sufficient equipment. Carrier offers insufficient evidence of probative value to justify its action. Part (1) of the claim should be sustained.

During the time involved all Claimants were fully employed by Carrier (except one who was recovering from an operation); therefore, Claimants suffered no pecuniary loss. Considering all of the circumstances of this case, it is our opinion that Parts (2), (3), (4), and (5) of the claim should be limited to payment by Carrier of one dollar to each named Claimant. Award 10730 (Ables).

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 Agreement was violated.

AWARD

Claim sustained in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of November 1963.