Award No. 11897
Docket No. MW-11183

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Levi M. Hall, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS

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 framing bridge and building material for an overpass just South of Ft. Worth, Texas, to the W. J. Smith Tie and Timber Treating Plant at Denison, Texas, whose employes hold no seniority rights under the provisions of this agreement.

(2) The employes holding seniority in the Bridge and Building Department on the old North Texas District, Seniority District No. 4, on the 1958 Seniority Roster, each be allowed pay at their respective straight time rate of pay for an equal proportionate share of the total man hours consumed by the contractor forces in performing the work referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: After the railroad was constructed and continuing until about 1918, bridge and building material was shipped directly to bridge and building gangs at the location of use and there, in a timber yard, Bridge and Building employes used cross cut saws, foot adzes and hand-powered boring augers to frame the material and make the installations in the bridge.

About 1918, the Carrier determined that bridge and building material should be framed, bored and treated at a central point for the purpose of conserving timber. The Carrier constructed, within the area of the Tie Plant at Denison which was operated by the carrier at that time as a company owned plant, a mill and material yard to frame the material before being treated. Up until August 20, 1957, the Carrier had a complete wood working shop, equipped to do any work using material made out of wood and a framing yard to lay out any heavy framing such as bridge decks and bents. Machines consisted of adzes, machines to dap out bridge ties, 36 in. cut-off saws, a 30 in. conveying

OPINION OF BOARD: In orderly sequence it is proper that we consider the procedural questions presented in this dispute before proceeding to a subsequent possible consideration of this claim on its merits: From the outset in its submission Carrier has contended that under Article V, Carrier's Proposal No. 7 of the August 21, 1954, Agreement, Section (c) stipulates that the institution of a claim before the National Railroad Adjustment Board must be done within nine (9) months from the date of the denial of the claim by the highest designated officer of the Carrier and urges that the letter of intention addressed to the Executive Secretary of a Board does not constitute the element of a petition as provided for in the Agreement. This proposal has been before the Railroad Adjustment Board on several occasions and has been quite generally determined adversely to the Carrier so the subject will be given no further attention.

Let us then pass to a consideration of the objection raised by the Carrier to a determination by this Board of the claim on the merits on the ground that Claimant has failed to comply with Article V, 1 (a) of the August 21, 1954, Agreement in that Claimant has not described nor identified the employes involved in the claim with the particularity required by the Agreement. Part 2 of the Statement of Claim reads, as follows: "(2) The employes holding seniority in the Bridge and Building Department on the old North Texas District No. 4, on the 1958 Seniority Roster, each be allowed pay . . ."

The precise question involved here arose between these parties and on this property and was considered by this Board in Awards 11499, 11500, 11501, 11502, 11503 and 11504 (Dorsey). The descriptions used in those Statements of Claim are quite similar to the one employed in the instant case.

In Award 11662 (Engelstein) on this same property where the description of employes in the Statement of Claim is similar to the description herein, the question involving the particularity with which Claimants should be identified was again presented to this Board and the determination of that issue was resolved favorably to the Claimants. Either the prior awards on this subject on this property between these parties were not presented to Referee in Award 11662, or he totally ignored them. His only comment in the Opinion with reference to the issue presented is, as follows:

> "Carrier contends that the Board does not have jurisdiction because the complaint filed fails to **identify the names of the Claimants involved herein** and because it does not comply with the time limit provisions as set forth in the National Agreement of August 21, 1954. **This Carrier offered similar defenses in other cases before this and other divisions, and they have been rejected.** The Board reaffirms its prior decisions. . . ." (Emphasis ours.)

An examination of the awards on this and other properties where the Brotherhood of Maintenance of Way Employes have been involved will clearly indicate that a similar defense of this nature has been raised in former cases and in some of these cases such an objection has been rejected and in other instances such an objection to the consideration of a claim because the employes have not been properly identified has been sustained.

In any claim presented there is usually a rule or rules involved, there is a contention that there has been a violation of a right under an Agreement and a claim that an employe or employes have suffered some injury. The claim obviously must be made under circumstances where the injured party or parties is known or the identity of such party or parties is readily and clearly ascer-

tainable. Assuming the claim as presented here was allowed, there then could follow a dispute between the parties as to what employes were entitled to payment. That is the reason for the rule set forth in the August 21, 1954, Agreement and its interpretation in subsequent awards.

To the knowledge of this Referee, the first award on this property discussing this subject or Article V, 1 (a) of the August 21, 1954, Agreement was Award 11499 (Dorsey) which was followed by subsequent awards by this same Referee and on the same property. In Award 11499 the Referee made a part of his Opinion, by reference, Award 11372 (Dorsey) which contains a logical discussion of the particularity with which employes involved should be identified in a Statement of Claim. It has been the practice of this Board to follow a precedent once it has been established unless it is subsequently found to be palpably erroneous. By this, we do not mean that we must follow blindly precedent awards, still, if there is to be a departure from or the rejection of a prior award on the property and between the same parties, the reason or reasons for such departure should be set out clearly in the Opinion. That was not done in Award 11662. We cannot find that Awards 11499 to 11504 (incl.) are palpably erroneous. See also Awards 11229 and 11230 (Sheridan).

Having reached a determination to dispose of this matter on procedural grounds, a discussion of this claim on the merits is unnecessary.

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 claim, as presented, does not satisfy the requirements of Article V, 1 (a) of the National Agreement of August 21, 1954.

AWARD

Claim dismissed.

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.