

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur Stark, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**SOUTHERN PACIFIC COMPANY
(Pacific Lines)**

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

(1) The Carrier violated the effective Agreement between the dates of May 21 and June 2, 1956, when it assigned the work of hauling dirt fill for the subgrade of Diesel Spur and also for ramp at the unloading spur on Wye track at Tucson, Arizona, to a contractor whose employes hold no seniority rights under the effective Agreement.

(2) Each Truck Driver, Bulldozer Operator and Shovel Operator holding seniority as such and who was working on the Tucson Division during the period covered by this claim, 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 forces in performing the work referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: Between the dates of May 21 and June 2, 1956, the work of hauling dirt to form the subgrade for a Diesel spur and for a ramp at the unloading spur on Wye track at Tucson, Arizona, was assigned to and performed by a General Contractor without negotiations with or concurrence in by the employes' authorized representatives.

The work consisted of the operation of a Shovel to load the dump trucks; the operation of the trucks in transporting the dirt; and the operation of a Bulldozer to maintain the fills at the desired grade. 240 man-hours were consumed by the contractor's forces in the performance of the above referred to work.

The employes holding seniority as Truck Drivers, Shovel Operators and Bulldozer Operators on the Tucson Division were available and have heretofore performed work of a similar nature and character, using Carrier owned equipment.

The Agreement violation was protested and the instant claim filed in behalf of the claimants.

—bulldozers and shovels—was being used in either storm damage preventive work, or for work made necessary by storm damage.

With respect to the Awards of this Division to which petitioner has referred in support of this claim, an examination of Award 3251 will readily reveal that the facts upon which that Award was based bear no similarity whatever to those here under consideration. Award 4647 is apparently cited in error as it was not authored with Referee Stone, as petitioner asserts, and involves a Pullman Conductor operation. The contracting of work is in no way involved in case covered by that Award.

Carrier submits it has shown herein that such of the work in connection with the projects here involved as could be done with carrier owned equipment and available forces was handled in that manner; however, the dirt fill required, consisting of some 1600 cubic yards, was a project far beyond the capacity of equipment owned by carrier and available for the work. It has also been shown herein (Carrier's Exhibit "C") that throughout the life of the current agreement and prior thereto, similar work has been contracted without protest from petitioner.

CONCLUSION

Carrier asserts that it has conclusively established that the claim in this docket is entirely lacking in either merit or agreement support and therefore requests that said claim, if not dismissed, 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: The claim here consists of two parts: (1) an allegation that Carrier violated the Agreement when, between May 21 and June 2, 1956, it assigned certain work to a contractor; (2) a request for payments to "each Truck Driver, Bulldozer Operator and Shovel Operator holding seniority as such and who was working on the Tucson Division during the period covered. . . ."

At the outset the issue is raised whether the claim is sufficiently clear and specific as to satisfy the requirements of Article V, Section 1(a) of the August 21, 1954 Agreement that "all claims or grievances must be presented in writing by or on behalf of the employee involved. . . ."

It is not clear at all, from the facts at hand, that performance by a contractor of the work in dispute (hauling dirt fill for the subgrade of a Diesel Spur and Ramp at the Unloading Spur on the track at Tucson, Arizona) would adversely affect all employees in the three classifications who were working on the Tucson Division. It may well be that Petitioner knows for whom claims are being made, but Carrier is also entitled to know with some specificity (names are not always essential) the identity of actual or potential

Claimants so it can intelligently present its facts and arguments. A claim should be sufficiently clear so as to rule out (at least to the maximum extent possible) any reasonably anticipated future dispute over who the Claimants are or who is entitled to benefit from a sustaining award.

This principle was enunciated, in somewhat different words, in Award 11372 and reaffirmed in Award 11499, both cases involving the B. of M. of W. and generalized claims similar to the one here. Two other such claims by the Organization (on a different Carrier) were dismissed as being too vague and indefinite in Awards 11229 and 11230. (Awards involving other Organizations—but applying the same general approach—include 11038, 11066 and 11284.)

Under the circumstances, and after reviewing the Awards cited by Petitioner, it is our conclusion that this claim should be dismissed.

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

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of December 1963.