

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

William N. Christian, 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 cutting fire lanes between Dundee and Winesap, Virginia and between Winesap and Alexandria, Virginia to forces outside the scope of the subject agreement.

(2) Tractor Operator E. T. Towler now be allowed pay at his straight time rate for a number of hours equal to the number of hours consumed by the outside forces in performing the work referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: On November 18, 1957, and on date subsequent thereto, the work of cutting fire lanes on the Carrier's right-of-way between Dundee, Virginia and Winesap, Virginia was assigned to and performed by outside forces.

Similarly, on January 6, 7, 8, 9 and 10, 1958, and on dates subsequent thereto, the work of cutting fire lanes on the right-of-way between Winesap, Virginia and Alexandria, Virginia was assigned to and performed by outside forces.

The cutting of these fire lanes by outside forces, who hold no seniority rights under the provisions of this Agreement, was accomplished through the operation and use of a bulldozer.

The work was of the character that has heretofore been usually and traditionally performed by the Carrier's Maintenance of Way Department employees, either by the use of bulldozers or by the use of shovels.

The claimant, who has established and holds seniority as a Tractor Operator, was available, fully qualified and could have efficiently and expediently performed the work assigned to contract.

(c) Similar claims and demands have been denied by prior Board awards and under the principle of these Awards, the Board cannot do other than make a denial award.

Monopolistic rights not having been conferred upon tractor (bulldozer) operators by any language contained in the Agreement in evidence and tractor (bulldozer) operators not heretofore having been utilized to perform the work exclusively under an established practice, in fact, the practice being to the contrary, the Board cannot do other than make a denial award.

All evidence submitted in support of Carrier's position is known to employe representatives.

Carrier, not having seen the Brotherhood's submission, reserves the right after doing so to make response thereto and submit any other evidence necessary for the protection of its interests.

(Exhibits not reproduced.)

OPINION OF BOARD: It appears from the record that various exhibits in Ex Parte Submissions by both Employes and Carrier were not exhibited to the adverse party and made a part of the dispute during handling of the claim on the property.

The paucity of the evidence introduced and exchanged by the parties during handling of the claim on the property requires dismissal of the claim. Please see Circular No. 1 of the Board.

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 Agreement was not violated.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of December 1963.