

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

**Kieran P. O'Gallagher, Referee**

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**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 Agreement when it failed to recall Weed Mower Operator F. C. Winton to service when a weed mower was instituted to service on or about May 15, 1958.

(2) Weed Mower Operator F. C. Winton now be allowed pay at the Weed Mower Operator's rate for such time as an employee holding no seniority as Off-Track Weed Mower was used to operate the Weed Mower in the instance referred to in Part (1) of this claim.

**EMPLOYEES' STATEMENT OF FACTS:** On or about May 15, 1958, the Carrier reinstituted to service as off-track weed mower and assigned the operation thereof to an employee who holds no seniority rights in the Off-Track Weed Mower Operator's Class or branch of service.

The Claimant, who has established and holds seniority as an Off-Track Weed Mower Operator, was available, ready and willing to perform the work described above, but was not called or notified to do so.

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

The claim was declined, as well as all subsequent appeals.

The Agreement in effect between the two parties to this dispute dated September 1, 1949, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Facts.

**POSITION OF EMPLOYES:** Rules 1 and 4 of Article 1 read as follows:

**"RULE 1.**

These rules, in their entirety, constitute an agreement between the Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-

All data submitted in support of the Carrier's position have been heretofore submitted to the Employees or their duly accredited representatives.

The Carriers request ample time and opportunity to reply to any and all allegations contained in Employees' and Organization's submission and pleadings.

Except as herein expressly admitted, the Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas, and each of them, deny each and every, all and singular, the allegations of the Organization and Employees in alleged unadjusted dispute, claim or grievance.

For each and all of the foregoing reasons, the Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas, and each of them, respectfully request the Third Division, National Railroad Adjustment Board, deny said claim and grant said Railroad Companies, and each of them, such other relief to which they may be entitled.

(Exhibits not reproduced.)

**OPINION OF BOARD:** In the instant case the Carrier, invoking Rule 25, Article 3, of the current agreement, which provides:

**"RULE 25.**

When employees laid off by reason of force reduction desire to retain their seniority rights, laborers must file as provided in Rule 14 of this Article and other employees must file with the officer of the sub-department, within five days of the day on which they were notified of layoff, their address, and renew same each sixty (60) days. Failure to renew the address each sixty (60) days or to return to service within seven (7) days after being so notified, will forfeit all seniority rights. When force is not restored within twelve (12) months after date of reduction, employee will be considered out of service and dropped from seniority list."

contends the failure of the Claimant to file his address with the proper officer of the Carrier constituted an abandonment of his seniority as a Weed Mower Operator.

The record shows the Claimant was laid off as a Weed Mower Operator at the termination of the weed growing season on August 29, 1957; that he immediately reverted to his position as section laborer and he continued employment in the Maintenance of Way Department of the Carrier until April 9, 1958, when he was laid off account reduction in force.

The record further shows that on May 15, 1958, the Carrier reactivated its weed mowing machines, and the Board finds that the continuous service of the Claimant in the Maintenance of Way Department constituted a substantial compliance by the Claimant with the provisions of Rule 25 and it thereupon became the duty of the Carrier to honor the seniority of the Claimant in the premises.

In the circumstance, we find a sustaining award as to Part 1 of the claim is merited.

Part 2 of the claim is a Scope Rule case, we find that the Scope Rule cited is general in character, and in such cases we have consistently held that in order to prevail the Claimant must prove by a preponderance of the evidence that the cutting of weeds has been historically, customarily and usually performed by Weed Mower Operators exclusively. This the Claimant has failed to do and for that reason Part 2 of the claim must be denied.

**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 Employee involved in this dispute are respectively Carrier and Employee 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 as to Part 1 and denied as to Part 2.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 20th day of February 1964.

#### CARRIER MEMBERS' CONCURRENCE TO AWARD 12236 DOCKET MW-11298

We concur with AWARD 12236 in denying that the Scope Rule reserves cutting weeds to weed mower operators exclusively, but we dissent to that portion of the opinion holding that continuous service in the M/W Department constituted substantial compliance with the provisions of Rule 25, thereby continuing claimants' seniority as a weed mower operator.

Rule 25 is absolutely clear in requiring laborers who desire to maintain their seniority rights to comply with Rule 14, Article 3. Weed mower operators must file with the officer of the Sub-department. Claimant failed to comply with this rule; consequently, forfeited his seniority.

W. M. Roberts  
G. L. Naylor  
R. E. Black  
W. F. Euker  
R. A. De Rossett