

Award No. 13283
Docket No. MW-13033

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

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

(1) The Carrier violated the effective Agreement when it assigned grading and other related work in connection with the relocation of the stub track at Glenview, Illinois on November 7, 8, 9 and 10, 1960 to outside forces.

(2) Machine Operator Dewey Smith be allowed 32 hours' pay at his straight-time rate because of the violation referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: On November 7, 8, 9 and 10, 1960 the Carrier assigned the work of grading for the relocation of a stub track at Glenview, Illinois, to Contractor Roy Strom, without negotiation with or concurrence by the employees' authorized representative.

The work was performed by the Contractor's employe operating a D-6 Caterpillar tractor equipped with a 2½ yard capacity bucket. Thirty-two (32) hours' were consumed by the Contractor's employe in the performance of said work.

The Carrier has a number of crawler tractors located at various points on its property which are frequently used to perform work of the character here involved, as well as a number of front end loaders and bulldozers which could perform this work.

Claim was timely and properly presented and handled at all stages of appeal up to and including the Carrier's highest appellate officer.

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: Rule 1 reads:

A copy of the letter Assistant General Chairman McDonald wrote Mr. Pottsmith is enclosed for your ready reference. The claim as submitted is valid and it should be paid.

Mr. Pottsmith receives a copy of this letter indicating to him that his decision is being rejected.

Very truly yours,

/s/ J. G. James

J. G. James
General Chairman"

JGJ:z
Enclosure
cc: H. C. Pottsmith
oeiu-12

It will be noted that at no time during the handling of the instant case on the property did the employees cite any schedule rules or present any positive and substantive evidence in support of their contentions and claim, but to the contrary all the employees have done is to make unfounded and unsupported allegations that the Carrier violated the agreement without even attempting to substantiate such allegations. It is the Carrier's position that the employees have failed to meet the burden of proof feature in the instant claim in view of which the claim must be dismissed in its entirety.

In support of the Carrier's position in the instant dispute we wish to direct attention to the following Third Division Awards:

2338
5151
6299
6592
7805
7806

In view of the foregoing the Carrier submits that the instant claim is not supported by schedule rules or past practice and the Carrier respectfully requests that the claim be denied.

(Exhibits not reproduced)

OPINION OF BOARD: Employees claim that Carrier violated the Agreement by contracting out the work of grading for the relocation of a stub track without negotiation or concurrence by the Employees.

If the work involved were reserved to the Employees by the Agreement, it would be incumbent on the Carrier to justify its departure from such reservation by proving some special circumstances warranting an exception to the reservation contained in the rules. However, Carrier argues that Employees have failed to meet their elementary and original burden of proof on the property by failing to allege the violation of any specific rule and by failing to present any positive and substantive evidence to support their claim.

The record shows that on the property the Employees did not allege the violation of any specific rule. Before the burden shifted to the Carrier to

prove that it was warranted in unilaterally removing reserved work from the coverage of the Agreement, it was incumbent on the Employees to show that the work was, in fact, reserved to it under the Agreement; this fact could not be assumed to have been proved simply on the basis of Employee's claim that it was so.

From the record developed on the property we cannot find that the involved work was proved to be reserved to the Employees by the terms of the Agreement. Thus, there was no burden on the Carrier to show special circumstances permitting an exception to such a reservation. Carrier's attempt on the property and in its Submission to demonstrate such special circumstances was not a waiver and did not cancel out the obligation of the Employees first to make a viable case for their claim.

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 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 10th day of February, 1965.