



Award No. 14316
Docket No. MW-11804

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

G. Dan Rambo, 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 constructing a number of concrete houses for use as scale houses and wash houses to a General Contractor whose employees hold no seniority rights under the provisions of this Agreement.

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

EMPLOYES' STATEMENT OF FACTS: Within 60 days of April, 1959, the work of constructing a number of reinforced Concrete Houses, for use as Scale Houses and Wash Houses, was assigned to and performed by the Cole Construction Company, without negotiations with the employes' authorized representatives.

For the most part, the aforementioned reinforced Concrete Houses were constructed by the Contractor's forces inside of the Carrier's old Power House building at Denison, Texas. The manner in which these houses were constructed, moved and erected was described in the letter of claim presentation as follows:

"Beginning within sixty (60) days of April 1, 1959, the Carrier contracted to Cole Construction Company the constructing of several concrete houses for scale houses and wash houses of reinforced concrete 8 feet wide, 13 feet long and 8 feet high; the floor and roof 2½ inches thick, with one end open. Then two such houses will be placed end to end with the open ends together. The total house in size will be 8'x26'x8'. Each of the completed houses will have windows on one side and two doors on the same side and then painted; then, as stated above, the two sections are loaded on flat cars or coal cars and

tection of soft concrete from weather and other damage; wetting and covering curing concrete, etc., Cole Construction Company desired to perform this work indoors, but they had no building in which they could carry on this operation; it became necessary that they construct, purchase, or lease such a building.

After searching over the entire city of Denison, Texas, for a suitable building in which to carry on this work, Cole Construction Company found that an old unused powerhouse building at Ray Yard (Denison, Texas) belonging to the Carrier was the only available building in Denison of sufficient height, size and doorways to accommodate construction of these houses and their removal with motor crane.

The Cole Construction Company therefore leased this old brick powerhouse building from the Carrier, for the purpose of constructing these pre-cast houses therein and for other purposes, as evidenced by Carrier's Form 49, Industrial Lease, dated January 5, 1959, a copy of which is attached hereto as Carrier's Exhibit "C".

On April 1, 1959, General Chairman E. Jones filed claim with Division Engineer E. P. Kennedy on behalf of unnamed and unidentified claimants, that each of said unnamed and unidentified claimants be paid an equal proportionate share of the total man hours consumed by Cole Construction Company's employees in manufacturing these pre-cast houses, beginning within sixty (60) days of April 1, 1959.

This purported claim has been handled in the usual manner on the property, up to and including the undersigned highest operating officer of the Carrier authorized to handle time claims, and was declined by the undersigned on June 27, 1959, discussed in conference on January 12, 1960, and declination affirmed on January 27, 1960.

The controlling working agreement, No. DP-173, effective September 1, 1949, and the National Agreement of August 21, 1954, to which both the Carrier and the Organization are parties, are on file with the Third Division.

Attached as Carrier's Exhibit "A" is a photocopy reproduction of all correspondence between the parties during the handling of this purported claim on the property.

(Exhibits not reproduced.)

OPINION OF BOARD: There are three elements necessary to gaining an award as a result of a bona fide grievance and the burden of proof is shouldered by the Petitioner: (1) That an existing applicable agreement has been violated; (2) that as a direct and proximate result of the violation injury has resulted to an employee or employees covered by and party or parties to the agreement; (3) that the injury is of a given dimension or value or sum certain so that a proper remedy may be assessed.

The claim filed herein by the Organization asks that, as a result of the alleged violation of Agreement:

"(2) The employees holding seniority in the Bridge and Building Department on Seniority District No. 4, old North Texas District, each be allowed pay at his respective straight time rate for an equal

proportionate share of the total man-hours consumed by the Contractor's forces in performing the work referred to in Part (1) of this claim."

Carrier responds that proper submission of a claim or grievance must be made in accordance with Article V, Section 1(a) of the National Agreement of August 21, 1954, as follows:

"1. All claims or grievances arising on or after January 1, 1955 shall be handled as follows:

'(a) All claims or grievances must be presented in writing by or on behalf of the employe involved, to the officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed, the carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employe or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances.'"

Carrier argues that identifying Claimants as "employees holding seniority in the Bridge and Building Department on Seniority District No. 4, Old North Texas District" is not satisfactory compliance with this provision, that claims for unnamed employees are invalid.

On the "unnamed Claimant" issue, this Board concurs with the Board in Award No. 12299 (Wolf) when it said:

"* * * Labor agreements are not obstacle courses full of pitfalls to trip the unwary. They should not be interpreted with such self-multilating narrowness that contract violations go unpunished while each procedural slip is magnified into a fatal blunder.

We can agree that Claimants should be identified without requiring that they be named. A name is not a man but merely one form of identification of a man. Other reasonable identification should be acceptable, the test being the pragmatic one; can he be found from the description. If the description is so diffuse, so ambiguous, so loose that a dispute would ensue as to whom it meant, it is an inadequate description. If, however, it so describes a man that he can be found without difficulty, all reasonable demands for specificity are satisfied."

In the long line of awards decided on this issue where the Board found the Claimants "readily determinable", "readily ascertained", "easily identifiable" the requirement of specificity of the Agreement was held satisfied and in those awards this Board concurs. But does the subject claim meet that test?

It appears to this Board that this claim is deficient as regards setting out who as Claimants are "involved". All employees holding seniority in the subject district on a given date or within given limits might be shown to be involved and thus held readily determinable as Claimants, but as stated the argument of Carrier prevails.

This claim as presented is vague, uncertain and indefinite and therefore must 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 is vague, uncertain and indefinite.

AWARD

Claim is dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of April 1966.