Award No. 14362
Docket No. MW-12411

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

THE TEXAS AND PACIFIC 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 clearing the right-of-way of debris at Ridglea Spur on Section 239 and the work of loading said debris on T&P car No. 81247 to Contractor L. C. Cockroll.

(2) The Section Foreman and the three senior laborers assigned to Section 239 each be allowed eight hours' pay at his respective straight time rate because of the violation referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: On June 10, 1959, the work of clearing the right-of-way of debris at Ridglea Spur on Section 239 and the work of loading the debris into T&P Car No. 81274 was performed by forces employed by Contractor L. C. Cockroll. Twenty-four (24) man-hours were consumed by the Contractor's employes in the performance of the aforementioned work.

The maintenance and repair of the Carrier's right-of-way, which includes work of the character involved here, has always been assigned to and performed by the Carrier's track forces.

The Claimants, who were regularly assigned to their respective positions on Section 239, were available and could have expeditiously performed the work assigned to contract.

Consequently, the claim as set forth herein was presented and progressed in the usual and customary manner on the property, but was declined at all stages of the appeals procedure.

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.

I must, under the circumstances, sustain Mr. Tucker's decision and your appeal is hereby denied."

Assistant General Chairman Timman rejected that decision and appealed the case to the Director of Personnel, the Carrier's highest designated officer, by letter dated October 21, 1959, which is reproduced as Carrier's Exhibit No. 1, attached. In that appeal, Mr. Timman still persisted in using the WRONG NAME for the contractor and in describing the work done by the contractor as "maintenance work," and as "clearing right of way of rubbish." He also claimed that such work in the past had been done solely by section laborers, but he offered no evidence of that, and it is not a fact.

Conference on the case was postponed at the Brotherhood's request under a written agreement extending the Carrier's time for decision on the case, and was held on March 25, 1960. At the conference, the identity of the proposed beneficiaries of the anonymous claim was still not determined, as the Assistant General Chairman had no particular real person in mind. The claims or protests were denied by the final decision of the Carrier's highest designated officer on March 30, 1960. That decision is reproduced below, as the principal part of Carrier's position.

No reply to that decision was ever received, and the next thing the Company heard in regard to this case was on December 9, 1960, when we received a copy of a letter, dated December 7, 1960, from Mr. H. C. Crotty, President of the Brotherhood of Maintenance of Way Employes, addressed to Mr. S. H. Schulty, Executive Secretary of the Third Division of the National Railroad Adjustment Board, in which letter Mr. Crotty stated that he intended to file, at a later date, an ex parte submission of an unadjusted claim which evidently referred to this case. However, in an effort to make the claim sound better, Mr. Crotty has altered his description of the alleged violation, and now he describes the work as:

"clearing the right-of-way debris . . . and . . . loading said debris on T&P Car No. . . ."

There is no dispute about the fact that the right-of-way was not impeded, blocked or dangerous, and did not need clearing; that the "debris" was just garbage and trash scattered around, on and from the driveway at the team track; that the right-of-way was not repaired or altered; and that no track repairs were performed on the occasion in question. The work here in question was the work customarily performed by a trash man, garbage man, or scavenger, or street cleaner.

OPINION OF BOARD: Initially we would observe that the Carrier here has raised questions of alleged procedural deficiencies with respect to the handling of the claim before us in this docket.

However, in view of our disposition of this dispute as hereinafter set forth, we do not discuss nor make findings with regard to these issues.

The principles and parties here are identical with those involved in Award No. 10585 of this Board. For the reasons therein cited we will follow that award and deny this 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 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 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of April 1966.

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