



Award No. 14468
Docket No. MW-12507

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

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

(1) The Carrier violated the effective Agreement when, on or about November 18, 1959, it assigned the work of constructing the subgrade for the relocation of the Taylor Yard Offices at Los Angeles, California to a General Contractor, whose employees hold no seniority rights under the provisions of this Agreement.

(2) Each Tractor-Bulldozer Operator within the Track Sub-department on the Los Angeles Division be allowed pay at his respective straight time rate for an equal proportionate share of the total number of man-hours consumed by the Contractor's forces in performing work referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: On or about November 18, 1959, the work of constructing the subgrade for the relocation of the Taylor Yard Offices at Los Angeles, California was assigned to and performed by a General Contractor, whose employees hold no seniority rights under the provisions of this Agreement.

The work consisted of transporting approximately 18,000 cubic yards of fill dirt and leveling all ground in the Sycamore wash area from the Glendale Lead to the Los Angeles River, and to Kerr Street.

In the performance of this work, the Contractor utilized bulldozers and tractor-carryalls which the Contractor rented from another concern.

The employees holding seniority as Tractor-Bulldozer Operators on the Los Angeles Division were available and have heretofore performed work of a similar character, using carrier-owned bulldozers and tractor-carryalls.

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

any and all sub-departments of the Maintenance of Way and Structures Department, represented by the Brotherhood of Maintenance of Way Employees, and such employees shall perform all work in the Maintenance of Way and Structures Department . . ." (Emphasis added.)

The manifest object of this proposal was to deprive Carrier of the right it had under the original Scope Rule to contract out work. The proposal was rejected and the original Scope Rule under which Carrier had consistently been accorded the right to contract out work was re-adopted without change.

4. By letter dated January 17, 1960 (Carrier's Exhibit "B"), Petitioner's Division Chairman submitted claim on behalf of unnamed claimants for ". . . each his proportionate share at their regular straight time rates of pay of the total man hours that will be consumed by the contractor's forces in performing the work in violation referred to in part (1) of our Statement of claim." That claim was denied by Division Superintendent under date of February 19, 1960 (Carrier's Exhibit "C"). By letter dated March 8, 1960 (Carrier's Exhibit "D") the General Chairman appealed to Carrier's Assistant Manager of Personnel the following claim:

"STATEMENT OF CLAIM:

"1. That the Carrier violated the provisions of the current Agreement in effect since January 1, 1953 when on or about November 18, 1959 and subsequent days thereto it deprived and/or denied employees holding seniority in the class of Tractor-Bulldozer Operators within the Track Sub-Department, who were assigned their positions as provided for under the provisions of Rule 27, the right to perform work of their assigned positions in constructing sub-grade for relocation of the Taylor Yard offices on their assigned territory at Los Angeles, California, and that it further violated when it failed to advertise for bid newly created positions within the Track Sub-department to employees holding seniority within that sub-department in which sub-department classifications and rates of pay have been established to perform such work.

"2. That claimant employees holding seniority in the class of Tractor-Bulldozer Operators within the Track Sub-department on the Los Angeles Division be paid at their respective straight time rates of pay an equal proportionate share of the total man hours worked by employees of the G. G. Fisher Paving Company, who hold no seniority within the Track Sub-department of the Maintenance of Way Agreement in performing the work in violation referred to in Part 1 of this claim."

By letter dated April 28, 1960 (Carrier's Exhibit "E"), the latter denied the claim.

(Exhibits not reproduced.)

OPINION OF BOARD: The essential facts in this dispute are not in issue. This is another so-called "contracting out" case where it is alleged by Petitioner that certain grading work performed by a General Contractor for Carrier belonged exclusively to employees covered by the Scope Rule of the Maintenance of Way Agreement.

Claim is made for a monetary award to "Each Tractor-Bulldozer Operator within the Track Sub-department on the Los Angeles Division", where the work was performed. Each "Claimant" would be allowed pay at his respective straight time rate for an equal proportionate share of the total number of man hours consumed by the Contractor's forces in performing such work.

In the first instance, Carrier objects to the Board's consideration of the merits of the case on the grounds that the claim does not identify the employees involved with the specificity required to satisfy Article V, 1 (a) of the August 21, 1954 National Agreement.

Although prior awards of this Board have held that Article V, 1 (a) does not specifically require that the employee involved be named in the claim, his identity must be readily ascertainable. (Award 9205) When the dispute, as here, involves the contracting out of work allegedly in violation of the Scope Rule and the claim is filed on behalf of unnamed employees, they must be identified in such a manner as to prevent a further controversy concerning their identity. (Award 11038) A mere assertion by Petitioner that Carrier can ascertain the names of the employees involved from its records has no probative value. The burden is upon Petitioner to prove by evidence in the record that the identity of the employees involved is known to the Carrier. (Award 11372)

The claim before us encompasses every Tractor-Bulldozer Operator within the Track Sub-department on Carrier's Los Angeles Division. This Board in analogous cases has consistently held that such claims do not comply with Article V, 1 (a) of the August 21, 1954 Agreement. Therefore, we are compelled to dismiss the claim in accordance with such Awards without consideration of the merits of the dispute. (Awards 14316, 11504, 11503, 11501, 11500, 11499 and 11372)

Accordingly, we will dismiss the 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 Claim is barred.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of May 1966.

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