



Award No. 15335
Docket No. MW-13229

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 beginning with September 26, 1960, when it assigned the work of operating a Dump Truck in the Chicago Terminals to outside forces.

(2) Machine Operator C. J. Prunty be allowed pay at the Dump Truck Operator's rate for a number of hours equal to that consumed by outside forces in performing the work referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: On September 26, 27, 28, 29 and 30, October 3, 4, 5, 6, 7, 10, 11, 12, 13, 14 17, 18, 19, 20, 21, 24, 25, 26, 27, 28 and 31, and November 1, 2, 3, 4, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 21, and 22, 1960, the Carrier assigned the work of operating a Dump Truck in the Chicago Terminal 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 12 yard capacity Dump Truck. Three hundred and thirty-six (336) hours were consumed by the Contractor's employe in the performance of said work.

The Carrier has a number of dump trucks of various load capacities which are frequently used to perform work of the character here involved and the Carrier used its own trucks to the extent of 2,508 hours on this construction project.

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.

2. On two of the dates of the claim, i.e., November 9 and 21, there was no work such as that with which we are here concerned performed by the Strom Contractor forces.
3. Claimant Prunty holds seniority in Group 4 of the Roadway Equipment and Machine Sub-department. Through a practice long recognized by both parties, truck drivers in the Chicago Terminal, which includes Bensenville and Galewood, are drawn from employees holding seniority in the Track Sub-department.
4. Even if Claimant Prunty is capable of driving a truck, information furnished the Carrier indicates that he does not possess a State of Illinois chauffeur's license which is a requirement in the State of Illinois.

It is significant also that at no time during the handling of the instant claim on the property did the employees cite any schedule rules or agreements or in any other way furnish a basis for and in support of the instant claim.

There is attached as Carrier's Exhibit O copy of letter written by Mr. S. W. Amour, Assistant to Vice President, to Mr. J. G. James, General Chairman, under date of April 27, 1961.

(Exhibits not reproduced.)

OPINION OF BOARD: Employees argue that Carrier violated the Agreement by contracting out work of operating a 12 yard capacity rented dump truck in connection with a large construction project on its property. There is no evidence in the record that such work was intended to be reserved exclusively for Employees, and Carrier argues that past practice of the parties shows that it was not. It was Employees' burden to prove that work is reserved exclusively to it, before it becomes Carrier's burden to prove justification for contracting such work out; Employees have in this record failed to sustain their initial burden of proof.

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 1967.

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