



Award No. 16460

Docket No. MW-16871

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Herbert J. Mesigh, 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 Agreement when it assigned or permitted an individual outside the scope of the Agreement to perform the work of burying old blocks and leveling ground at Bunkie, Louisiana, on November 17 and 18, 1965.

(2) Roadway Machine Operator A. J. Averitt be allowed pay at his straight time rate for the total number of man hours consumed in performing the work referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: The Carrier sold a 20 foot by 60 foot frame building at Bunkie, Louisiana. Said building was subsequently removed from the Carrier's property by the purchaser. However, the concrete block foundation remained. On November 17 and 18, 1965, Contractor C. C. Stone, who holds no seniority under the Agreement, performed the work of removing and burying the concrete blocks and leveling the ground. Mr. Stone used a bulldozer in the performance of said work.

The work of dismantling buildings or parts thereof is the customary and traditional work of employes covered by the scope of the Agreement. Whenever said work has been performed with a bulldozer, a roadway machine operator has operated it.

The claimant has established and holds seniority rights as a roadway machine operator as of July 29, 1948. When Contractor Stone commenced this work, the claimant was assigned to a lower pay-rated position as a speed swing operator.

Claim was timely and properly presented and handled by the Employees 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, 1963, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Facts.

removed it, it was necessary to remove the old concrete foundation and bury the material. The Carrier does not own a bulldozer or any other machine with which this work could have been performed, and, accordingly, arranged with Mr. Stone to perform this work with the use of the bulldozer.

We find no provision in the Agreement between the Carrier and your Organization which accords to roadway machine operators or others the exclusive right to such work, and in any event the claimant was regularly assigned to and working as the operator of a speed swing machine on dates involved, and, of course, suffered no loss in earnings.

In view of the foregoing, there is no basis for this claim and it is hereby declined.

Yours truly,

/s/ B. W. Smith"

Having failed in their attempt to persuade the Carrier that this work had improperly been contracted, the Organization requested a conference with the Director of Labor Relations and same was held on July 20, 1966. At such conference the Employees were **unable in any way to further explain their position or point out applicable schedule support for their claims.** They were unable to sustain their position that the Carrier had adequate heavy construction machinery suitable for performance on this job or that the claimant was available for service.

In view of these facts, the Carrier was compelled to inform the Organization in part as follows under date of September 29, 1966:

"As advised during conference, this type work has been contracted in the past on the T&P and, in addition, Carrier does not own bulldozer or any other machine which could have performed the work here in question.

In view of the foregoing, we cannot change the decision given you in our letter dated May 20, 1966 declining the claim."

10. Some eight months plus, the Carrier received notification under date of February 14, 1967 that the Organization desired to submit the claims to your Honorable Board for Adjudication.

OPINION OF BOARD: This is a companion case to Docket MW-16854, Award No. 16459. It is agreed as far as the rights of the parties are concerned, the two cases are essentially the same issue and may be disposed of in the same manner. Petitioner in this case has not presented any additional significant contentions or any greater degree of proof to support its claim, therefore, since no violation of the Agreement was found in Docket MW-16854, Award No. 16459, this claim must necessarily be denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing:

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 has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of June 1968.