

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Thomas L. Hayes, Referee

Award Number 19427  
Docket Number MW-19417

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(The Denver and Rio Grande Western Railroad Company

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

(1) The Carrier violated the Agreement when it assigned B&B Supervisor Harding instead of a track department employe to operate a weed spray truck on February 17, 18, 19 and 20 at Denver, Colorado (System File MW-13-70/D-9-23).

(2) Mr. J. R. Vialpando be allowed thirty-two (32) hours of pay at the weed sprayer operator's rate because of the violation referred to in Part (1) hereof.

(3) The Carrier shall also pay the claimant six percent (6%) interest per annum on the monetary allowance accruing from the initial claim date until paid.

OPINION OF BOARD: On the dates involved in this claim, a Hi-rail truck with a mechanical spreader in the back of the truck was utilized to spray weed killing chemicals in Burnham Yards and in the North Yard at Denver, Colorado.

The truck was driven by B&B Supervisor Harden and the mechanical spreader was filled by a section laborer in the back of the truck.

The Organization contends that such work contractually belongs to the Carrier's Track Department forces under the provisions of Supplement #4 which reads as follows:

"THE DENVER AND RIO GRANDE  
WESTERN RAILROAD COMPANY

P. O. Box 5482

Denver 17, Colorado  
September 22, 1958

MW-9-58

Mr. W. R. Ansell  
General Chairman, BoFMWE  
Denver, Colorado

Dear Sir:

Your letter August 21, 1958, File D-2-117, appealing from

"decision of Superintendent, Grand Junction Division, and our conference September 2, 1958 in connection with the following case:

'Claimed by the System Committee of the Brotherhood of Maintenance of Way Employees:

1. That the Carrier violated our Current Agreement when they assigned B&B helper Ralph Buck to operate weed sprayer on the Grand Junction Division May 27th, 1958, through June 30th, 1958 and only paid him B&B helpers rate of pay.

2. That Mr. Ralph Buck now be allowed the difference in what he was paid at helpers rate of pay and B&B foreman's rate of pay for all the time worked May 27th, 1958 through June 30th, 1958.

3. That the senior B&B foreman W. W. Papke be paid the difference in what he earned as B&B carpenter May 27th, 1958 through June 30th, 1958 and B&B foreman's rate of pay. Also if W. W. Papke was employed a part of this time as B&B foreman then the next senior relief foreman R. L. Evans be paid the differential during that time. All account of this violation.'

We agreed in conference that in full and final disposition of this claim, Mr. Ralph Buck would be paid the difference between B&B helper's rate of pay and Weed Burner Operator's rate of pay for all time worked May 27, 1958 through June 30, 1958, operating company-owned weed sprayer on the Grand Junction Division; further that the latter rate of pay would be applicable to the operator of this machine in the future.

We also agreed that in the future this machine would be operated by the senior qualified employe in the Track Department making application for such work and only in the event there was no qualified applicant from that department, would a qualified applicant from some other department of the Maintenance of Way forces be used.

Will you kindly signify your concurrence by signing one copy of this letter in the space provided, returning to me for my file.

Yours truly,  
/s/ E. B. HERDMAN  
Director of Personnel

ACCEPTED:  
/s/ W. R. ANCELL  
General Chairman, BofMWE  
LGH:ha"

Carrier directs our attention to the fact that Supplement #4 provides that Mr. Buck would be paid the Weed Burner Operator's rate of pay for operating the Company-owned weed sprayer; that the same rate of pay would be applicable to the operator of "this machine" in the future and that "this machine" would be handled by the senior qualified employee making application for such work.

The Board is persuaded that the words "this machine" were meant to mean only the weed spraying car (X-301), a converted caboose and do not apply to the machine and apparatus used at Denver on the dates involved in this claim.

In view of the foregoing, we find no violation of Supplement #4 or the Agreement.

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 was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

*E. A. Killen*  
Executive Secretary

Dated at Chicago, Illinois, this 29th day of September 1942.