

Award No. 5600
Docket No. MW-5626

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Francis J. Robertson—Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
ILLINOIS TERMINAL RAILROAD COMPANY

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

(1) The Carrier violated the effective agreement when they assigned an employe holding no seniority in the Maintenance of Way Department to operate a Weed Burner, engaged in Maintenance of Way Work;

(2) Track Department employe George Faremont, be paid at the regular Weed Burner's rate of pay for eight (8) hours on August 23, 1950, and for each subsequent day, that an employe holding no seniority in the Maintenance of Way Department, was assigned to operate the Weed Burner.

EMPLOYES' STATEMENT OF FACTS: George Faremont is employed as Trackman with a Seniority date of February 2, 1932.

On August 22, 1950, the Carrier assigned a locomotive engineer or motorman, to the position of Weed Burner Motor Car Operator, thereby displacing Trackman George Faremont.

A claim was filed in behalf of George Faremont for compensation at the regular Weed Burner's rate of pay for eight (8) hours on August 23, 1950, and for each subsequent day that an employe holding no seniority in the Maintenance of Way Department, was assigned to operate the Weed Burner.

Claim was declined.

The agreement in effect between the two parties to this dispute, dated August 1, 1942 and subsequent amendments and interpretations are by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: The Scope Rule of the effective agreement reads as follows:

"These rules govern the hours of service, working conditions and rates of pay of all employes in the track department and the bridge and building department, below the rank of Assistant Roadmaster and/or corresponding officer.

The expressions 'positions' and 'work' used in this agreement refer to service, duties or operations necessary to be performed the

"There can be no question that the use of locomotive engineers in place of maintenance-of-way employees in the operation of these weed-burning machines was a direct violation of the agreement of May 25, 1931; and it is also clear that even apart from this agreement the work involved has been recognized by custom and practice to be work belonging to maintenance-of-way employees and as not infringing upon the work of any other class of employees.

* * * it is unreasonable to assume that it was intended that these machines, essentially utilized for the destruction of weeds rather than for the movement of equipment, be manned by both locomotive engineers and maintenance-of-way employees. * * *

We respectfully refer your Board to First Division Awards 11924 and 12942, wherein it was recognized that Maintenance of Way Employees operate Roadway Machine engaged in Maintenance of Way work.

We respectfully request that our claim be allowed.

It is hereby affirmed that all data herein submitted in support of our position have heretofore been presented to the Carrier and are hereby made a part of the question in dispute.

CARRIER'S STATEMENT OF FACT: This weed burner moves over the Railroad under train orders issued by the Dispatcher and as an extra train and for that reason our Engineers and Motormen claim this work under the provisions of their current Agreement which reads as follows:

"All train or yard movements shall be performed by motormen. However, the operation of shop cars and shifting of engines and passenger cars around terminals or stations is not included."

It should be understood that the Enginemen operate only the propelling machinery and that the actual weed burning machinery is operated by men from the Maintenance of Way employees. A Conductor taken from the ranks of the Brotherhood of Railroad Trainmen is also used in the operation of this machine as an extra train.

POSITION OF CARRIER: It is the position of the Carrier that, to a certain extent, this is a jurisdictional dispute between the Brotherhood of Locomotive Firemen and Enginemen, that Organization representing the Motormen and Enginemen on this Railroad, and the Brotherhood of Maintenance of Way Employees. However, it is also the position of the Carrier that, since this weed burner is moved along the Main Line from place to place as an extra train, running under train orders given by the Dispatcher and, therefore, is required to comply with all of the provisions of the current time tables and operating rules, its movement is properly the work of the Enginemen and Trainmen as employees of the Maintenance of Way Department are not qualified in the handling of train orders, movements, etc.

All facts and supporting data have either been referred to the Committee by the Carrier or discussed between the Carrier and Employees' representatives.

OPINION OF BOARD: This claim involves the asserted right of the Claimant, a trackman in the Maintenance of Way Department, to operate a Weed Burner. It is asserted by the Employees that claimant was displaced on August 22, 1950, by reason of the Carrier's assigning a locomotive engineer to the operation of a Weed Burner.

In this docket as in SG-5525, Award No. 5599, the identical argument is made on behalf of the Carrier, to wit: that we cannot proceed to a determination of this claim because no notice of the pendency of these proceedings has been given to other employees involved (those represented by the Brother-

hood of Locomotive Firemen and Enginemen) as required by Section 3, First (j) of the Railway Labor Act.

For the reasons set forth in our Opinion and Findings in the aforementioned Award, this claim will be dismissed without prejudice so that the employes may take whatever action they deem advisable with respect thereto hereafter.

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 claim should be dismissed without prejudice for the reasons set forth in the foregoing "Opinion of Board".

AWARD

Claim dismissed without prejudice in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 14th day of January, 1952.

DISSENT TO AWARD NO. 5600, DOCKET NO. MW-5626

We dissent.

(s) A. J. Cunningham
(s) A. R. Ferris
(s) G. Orndorff
(s) R. Sarchet
(s) J. H. Sylvester