Award No. 5953
Docket No. MW-5690

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Paul N. Guthrie, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

BOSTON AND MAINE RAILROAD

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

(1) That the Carrier violated the agreement by assigning certain work to a contractor in conjunction with snow removal at Boston, Mass., on February 1 and 2, 1948;

(2) That Work Equipment Operator G. C. Height be compensated for a number of hours at his respective rate equal to the hours worked by the employes of the contractor, and in accordance with the provisions of Rules 28 and 30-A.

EMPLOYES' STATEMENT OF FACTS: On Sunday, February 1, 1948 and Monday, February 2, 1948, cranes owned by T. Stuart and Sons Company, and operated by the employes of T. Stuart and Sons Company, were engaged by the Boston and Maine Railroad to unload snow at Yard 22, Boston, Mass.

The snow that was handled by the employes of T. Stuart and Sons Company, had been removed from the tracks, switches, roadways and walks in the Terminal area. It was then placed in gondola cars and moved to the unloading site in Yard 22.

Considerable overtime work was performed by the employes of T. Stuart and Sons Company, such overtime work being performed that Sunday night as follows:

February 1, 1948—6:00 P.M. to 11:00 P.M.	5 Hrs. @ $1.875
February 1, 1948—11:00 to 12:00 Midnight	1 Hr. @ $2.50
February 2, 1948—12:00 Midnight to 6:30 A.M.	6½ Hrs. @ 2.50
Total	$28.13

Boston and Maine Railroad cranes were idle at Yard 20 during the period that T. Stuart and Sons Company and their employes were engaged in snow removal work.

A claim was filed in behalf of G. C. Height, Work Equipment Operator who was available but not used during the period that individuals holding

be sufficient proof of Carrier's repeated assertion that snow removal work at least on this Carrier, does not belong to the Maintenance of Way employes by rule or practice.

SUMMARY

Carrier has clearly shown that the claim in this docket should be denied because:

(1) Decision involving the same identical facts and covering the same identical period has already been rendered in Award No. 5347. Petitioner is estopped from submitting a dispute covering a new claimant for the same identical period.

(2) Snow removal work is **not** primarily the work of Maintenance of Way employes on this property, never has been and certainly is not exclusively theirs by rule or practice. (Carrier's submissions in Dockets MW-5218 and MW-5470.)

(3) There is no merit in this claim.

All data and arguments herein contained have been presented to the Employes in conference and/or correspondence.

OPINION OF BOARD: This case is a claim of the System Committee of the Brotherhood on behalf of Work Equipment Operator G. C. Height. It is contended by petitioner that the respondent carrier violated the Agreement by assigning certain work in conjunction with snow removal at Boston on February 1 and 2, 1948, to a private contractor rather than using claimant for additional hours.

According to the record, Carrier engaged cranes owned by T. Stuart & Sons Company to unload snow in yard 22, Boston. Such cranes were used for this purpose on the dates at issue in this claim.

The petitioner contends that Claimant Height should have been instructed to move his crane to the proper location and to have unloaded the snow which was unloaded by the cranes of T. Stuart & Sons Company.

The Carrier contends that this case should be dismissed on the ground that the claim as presently before the Division is in fact the splitting of a cause of action which was disposed of in Award No. 5347. It is contended that the instant claim involves the same facts and circumstances as those involved in Award 5347, and that petitioner should not be permitted to present its claims in installments.

Further, it is argued, even if the instant case cannot be dismissed on these grounds, the decision of the Division, in Award 5347 fully disposed of the claim and there can be no further merit in the instant case.

After a careful review of the docket we doubt if this claim can be dismissed on the ground that it represents a splitting of a cause of action. However, we are convinced that there is merit to the argument that Award 5347 effectively disposed of the instant claim.

The record shows that the contractor used two cranes on the dates and during the hours in question. Award 5347 sustained payment for two crane operators of the Carrier up to sixteen hours on each of several days, including the two days here involved.

If it be said that the significant consideration is the number of hours worked rather than the number of cranes used we still do not find a basis on which to sustain this claim. If the total hours worked by the two claimants in Award 5347, plus the hours paid to them as a result of Award 5347,

are compared with the total hours worked by the two contractor cranes on the same dates, it will be found that the two totals are almost exactly equal —with not more than one hour's difference at most.

In view of these considerations we must conclude that the instant claim is without merit and should be denied. For all practical purposes any merit which the claim might have was fully satisfied by Award 5347.

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 Employe involved in this dispute are respectively Carrier and Employe 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 Carrier has already satisfied this claim by performance as directed by Award 5347.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 7th day of October, 1952.