

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

LeRoy A. Rader, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

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

(1) The Carrier violated the effective Agreement when it operated a chemical wood-spray machine over the Third District for a total of 144 straight time hours and 46 1/6 overtime hours during the months of June and July 1948, and utilized the services of a roadway machine operator who holds no seniority under the effective Agreement;

(2) The Carrier further violated the Agreement when it assigned two section men to assist the Roadway Machine Operator and refused to compensate them at the Roadway Machine Operator Helper's rate of pay;

(3) Roadway Machine Operator Helper E. H. Quinn be paid the difference between what he received at the Roadway Machine Operator Helper's rate of pay and what he would have received at the Roadway Machine Operator's rate of pay had he been properly assigned to perform the work outlined in Part (1) of this claim;

(4) Each of the section men that were assigned to work as Roadway Machine Operator Helpers be paid the difference between what they received at the Section Men's rate of pay and what they should have received at the Roadway Machine Operator Helper's rate of pay.

EMPLOYEES' STATEMENT OF FACTS: The Carrier contracted with a chemical company for the spraying of its roadbed with weed killing chemicals on the Arkansas, Oklahoma and Southern Divisions during the period of June 16, 1948 to July 19, 1948, both dates inclusive. A total of 144 straight time hours and 46 1/6 overtime hours were consumed in the performance of the work outlined above.

The weed-spray machine was operated by an employe of the chemical company, and two of the Carrier's section men were assigned to help the operator. The section men were compensated at their regular section men's rate of pay.

its weed control program and that the claim is unwarranted and groundless. We ask that it be denied.

It is hereby affirmed that all data herein contained is in substance known to the employes' representative and is hereby made a part of this dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: The factual background in this case goes back to April of 1922 when Carrier contracted with a chemical firm to furnish tools, outfit, labor, except three of Carrier's laborers to assist in work train service, and material, for the application of a chemical substance to some 200 miles of main line roadbed. Since that time a number of similar contracts have been entered into on almost a yearly basis. There is no record that prior to this claim the Petitioners have questioned such procedure and that there have been several revisions of the Agreement.

From the record it must be concluded that this has become a standard practice.

Petitioners seek to show an analogy between wood burning weed eradicators and the chemical treatment which is the subject under consideration here. However, the record shows the difference to be in that the chemicals used also destroy the roots of weeds while the other method does not and this by reason of the fact of the toxic nature of the chemicals used which also are shown to have possessed powerful ingredients making it necessary that the operator of such apparatus have knowledge of chemicals and the proper application of the same or else there is a danger to health. The roadbed is sterilized thus showing the nature of ingredients used. Also there is shown the care necessary in applying the same.

We feel that a practice of 27 years living through negotiation and changes of the Agreement is an established practice showing the intent of the parties as to the application to rules cited herein. And in the matter of established practice see Awards 816, 848, without Referee, 2338, 3839, 4954, 5747, 6112, 6299, 6392, 6704 and other awards cited therein.

We view this case as one governed by established practice and therein find no violation of the Agreement.

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 there was no violation of the Agreement.

AWARD

Claims denied in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 29th day of March, 1955.