

Award No. 9342

Docket No. MW-7946

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Thomas C. Begley, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

DELAWARE AND HUDSON RAILROAD CORPORATION

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

1. The Carrier violated the effective Agreement on May 29, 1952, when it assigned the work of replacing a sand stove at Oneonta, New York, to employees of the Motive Power Department;

2. The same number of Plumbers and Plumber Helpers, in their seniority order, be allowed pay at their respective straight time rates for an equal number of man-hours as were consumed by employees of the Motive Power Department in performing the work referred to in part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: On May 29, 1952, the Carrier assigned employees of the Motive Power Department to perform work in connection with the replacing of a sand stove at Oneonta, New York. These Motive Power Department employees consumed fifty-six (56) man-hours in the performance of this work, i.e., seven (7) employees worked eight (8) hours each on May 29, 1952.

Heretofore, work of this type has been performed by Maintenance of Way Plumbers and their Plumber Helpers, under the effective Maintenance of Way Agreement. Maintenance of Way Plumbers and Plumber Helpers were available on May 29, 1952, and could have performed this work, had the Carrier so directed.

Claim was filed for Maintenance of Way employees affected by this agreement violation. The Carrier has denied the claim.

The Agreement in effect between the two parties to this dispute dated November 15, 1943, together with supplements, amendments, and interpretations thereto are by reference made a part of this Statement of Facts.

POSITION OF EMPLOYEES: The Scope Rule of the effective Agreement, reads as follows:

Claim of Maintenance of Way employes for this work was denied by the highest officer designated to handle grievances on the property on October 29, 1952.

POSITION OF CARRIER: Claim in this case is the same as that involved in Case Nos. 2.51, 9.51 and 3.51 M.W., Docket No. 7611, carrier's ex parte submission dated June 20, 1955. Carrier submits the argument and evidence presented in Docket No. 7611 to support its position in the instant case.

Management affirmatively states that all matters referred to in the foregoing have been discussed with the committee and made a part of the particular question in dispute.

OPINION OF BOARD: The System Federation No. 35, Railway Employee's Department, A.F.L.-CIO, was given a notice of hearing by this Board in accordance with Section 3, First (j), of the Railway Labor Act.

No good purpose would be served by attempting to make any further refinements or distinctions in the subject matter of this dispute. It has been before us in identical claims disposed of by denial Awards 7790, 8008 and 8119. While different conclusions were reached in Awards 4754 and 7390 this referee agrees with the result reached in Awards 7790, 8008 and 8119 and holds the claim herein should be denied.

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 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.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 8th day of April 1960.