

**Award No. 11373**

**Docket No. MW-9948**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

**John H. Dorsey, Referee**

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC  
RAILROAD COMPANY**

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

(1) Carrier violated the agreement beginning on July 11, 1956 when it assigned stripping work at Wheeler Pit No. 2 to a contractor whose employees hold no seniority rights under the scope of this agreement.

(2) Each employee holding seniority in Group 4 of the Roadway Equipment and Machine Subdepartment on lines east of Mobridge be allowed pay at his respective straight time rate for an equal proportionate share of the total number of man hours consumed by the contractor's forces in performing the work referred to in Part (1) of this claim.

**EMPLOYEES' STATEMENT OF FACTS:** The Carrier owns a gravel pit at Janesville, Wisconsin, which is generally referred to as "Wheeler Pit No. 2". Beginning on July 11, 1956, it assigned the work of stripping this pit to Franks Brothers, a contractor whose employees hold no seniority under the scope of this agreement.

The contractor employed three tournapulls and one bulldozer in performing this work, and contracted to perform such work at the rate of 32¢ per yard. Similar work with company-owned equipment and with the use of Maintenance of Way personnel has been and is being performed at the Carrier's Wabasha Gravel Pit, at the Paragon pit near Miles City, Montana, in a gravel pit at Northern Montana, at the Three Forks gravel pit, at the Frenchtown gravel pit west of Missoula, Montana, at the Spokane Bridge gravel pit, at the Cohasset pit west of Beverly, at the Ragmar pit and many others.

The Agreement in effect between the two parties to this dispute dated September 1, 1949, together with supplements, amendments, and interpretations thereto, is by reference made a part of this Statement of Facts.

**POSITION OF EMPLOYES:** Rule 1, captioned Scope, reads as follows:

In conclusion we respectfully submit that the instant claim in behalf of un-named employees does not constitute compliance with the provisions of Article V of the August 21, 1954 Agreement and should therefore be dismissed. We further submit that the instant case is not in violation of the scope rule of the currently effective Schedule Agreement as alleged neither it is in violation of any rule of the effective Schedule Agreement, practice, custom or tradition and should therefore be denied.

All data contained herein has been made known to the Employees.

(Exhibits not reproduced.)

**OPINION OF BOARD:** Carrier, on the property, denied the claim for, *inter alia*, failure of Petitioner to present it "on behalf of the employee involved"—a mandatory requirement of Article V, 1.(a) of the National Agreement of August 21, 1954.

The description of the employees in paragraph (2) of the claim is, in substance, the same as paragraph (3) of the claim in Award 11372. The parties and Agreement herein under consideration are the same as in Award 11372.

Here, as in Award 11372, it is obvious that all of Carrier's employees "in Group 4 of the Roadway Equipment & Machine Sub-department on lines east of Mobridge," could not be adversely affected by the alleged violation of the Agreement, and, therefore, could not be "involved" in the claim within the meaning of that term as used in Article V, 1.(a).

For the reasons stated in Award 11372, we find that the claim, in the instant case, fails to identify the "employee(s) involved" with the particularity contemplated by Article V, 1.(a). We, therefore, will dismiss the claim.

**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 claim, as presented, fails to meet the requirements of Article V, 1.(a) of the National Agreement of August 21, 1954.

#### AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 26th day of April, 1963.