

Award No. 11471

Docket No. MW-10521

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Preston J. Moore, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**MISSOURI-KANSAS-TEXAS RAILROAD COMPANY
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS**

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

(1) The Carrier violated the effective Agreement when, on March 22, 1957, it assigned other than section laborers to perform the excavation and backfilling work necessary to repair underground water and steam transmission lines at Denison, Texas.

(2) The decision of Division Engineer Kennedy, dated April 1, 1957, was not in conformance with the requirements of Section 1(a) of Article V of the August 21, 1954 Agreement.

(3) Because of the violations referred to in parts (1) and (2) of this Statement of Claim, the claim, as presented by General Chairman Jones in a letter dated March 25, 1957, file 300-142-C. be allowed.

EMPLOYEES' STATEMENT OF FACTS: The facts surrounding the presentation of this claim are essentially set forth in General Chairman Jones' letter of presentation (referred to in Part (3) of our Statement of Claim) which reads as follows:

"300-142-C.

March 25, 1957

**Mr. E. P. Kennedy
Division Engineer
M-K-T Lines
901 Jackson Street
Waco, Texas**

Dear Sir:

Kindly accept this as time claim for the senior furloughed section laborer located at Denison, Texas, who it now appears to be General

"In regard to time claim filed by Mr. E. Jones for section labor against water service at Denison, Texas.

"I received this call about a steam line broken in tunnel in the coach yard March 22nd, about 10:30 A.M. and I sent my men to cut it off and repair it which they had to uncover tunnel to get to it.

"All of my men are mechanics and our contract does not say we have to use section labor to do all of our digging and backfilling as I understand it the mechanics can do any thing that needs to be done on our job, but it does say we can use section labor to do digging and backfilling."

No reply was received by the undersigned to that letter and the statement of the undersigned that Water Service employes have always performed any labor necessary in connection with their work and the statement of the Water Service Foreman W. M. Grossman, regarding use of section laborers for digging and backfilling, stand unchallenged, unrefuted, and undenied.

Carriers' records show that General Wilfork worked in Extra Gang No. 11, March 22, 1957, and was not available and would not have been used if a section laborer had been required for the service claimed, which the Carrier does not admit but denies.

All data submitted in support of the Carriers' position have been heretofore submitted to the Employees or their duly accredited representatives.

The Carriers request ample time and opportunity to reply to any and all allegations contained in Employees' and Organization's submission and pleading.

Except as herein expressly admitted, the Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas, and each of them, deny each and every, all and singular, the allegations of the Organization and Employees in alleged unadjusted dispute, claim or grievance.

For each and all of the foregoing reasons, the Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas, and each of them, respectfully request the Third Division, National Railroad Adjustment Board, deny said claim, and grant said Railroad Companies, and each of them, such other relief to which they may be entitled.

(Exhibits not reproduced.)

OPINION OF BOARD: Part 1 of the claim was not handled on the property in the usual manner. Therefore part 1 is dismissed.

On March 25, 1957, the General Chairman submitted a claim in behalf of General Wilfork to the Division Engineer. March 29, 1957, the Division Engineer denied the claim in a letter as follows:

"I am in receipt of your letter of March, 25, 1957, file, 300-142-C. Time claim favor of section laborer General Wilfork, for 8 hours pay for March, 22, 1957. This time claim is respectfully declined."

The denial does not advance any reason for disallowing the claim. Therefore it does not meet the requirements of Article V, 1(a) of the August 21, 1954 Agreement.

By letter of date May 31, 1957, the General Chairman submitted a claim for payment in accordance with the provisions of Article V, 1(a), and that claim has been appealed through proper channels to this Board.

The Division Engineer did not notify the General Chairman, in writing, within 60 days from filing of the claim, that the claim was disallowed. Therefore the claim must be allowed as presented.

Part 2 of the claim must be sustained. (Awards 9253, 10759, 10936.)

Part 3 of the claim must be sustained except the portion thereof which refers to the alleged violation in part 1 of the claim.

For the foregoing reasons, we find the Agreement was violated.

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 Employee involved in this dispute are respectively Carrier and Employee 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 violated.

AWARD

Part 1 dismissed. Parts 2 and 3 sustained as set forth above.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 6th day of June 1963.