

Award No. 11499

Docket No. MW-10722

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John H. Dorsey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

**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 it assigned the work of constructing a new grade for a passing track extension at Eddy, Texas to a General Contractor whose employees hold no seniority rights under the provisions of this Agreement.

(2) Each employee holding seniority in the Machine Operator's class or craft on the territory where the work was performed each be allowed pay at his respective straight time rate for an equal proportionate share of the total man hours consumed by the Contractor's forces in performing the work referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: In 1957, the Carrier decided to extend its passing track at Eddy, Texas, from Mile Post 866 to Mile Post 867.

In August of 1957, the work of constructing the grade for the above referred to passing track extension was assigned to and performed by a General Contractor.

The work was of the nature and character that has been traditionally performed by the employees holding seniority in the Machine Operator's class or craft, using equipment provided by the Carrier.

The employees holding seniority in the Machine Operators class or craft on the territory where the work was performed were available, fully qualified and could have expeditiously performed the above-referred to Machine Operator's work.

The Agreement violation was protested and the instant claim filed in behalf of the Claimants. The claim was handled in the usual and customary

"From the entire record it is found that the employees have requested punitive action against the Carrier such as was not contemplated nor provided for in the rules which were in effect when the claims arose."

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 pleadings.

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: The claim, as set forth above, consists of 2 parts: (1) It alleges that the contracting out of the work violated the Agreement; and, (2) Prays for a monetary award to "Each employee holding seniority in the Machine Operator's class or craft on the territory where the work was performed. . . ."

The issue presented is whether the claim identifies "the employee(s) involved" with the specificity required to satisfy Article V, 1. (a) of the August 21, 1954 National Agreement.

In recent Award No. 11372 this Board found that a claim, analogous to that in the case now before us, did not comply with Article V, 1 (a); and, by application of said Article we were compelled to dismiss the claim. To like effect were our recent Awards Nos. 11229, 11230. Cf. Awards Nos. 11038, 11066, 11284.

Having considered the arguments of Petitioner we are not persuaded that Award No. 11372 is palpably wrong. That Award, therefore, is controlling precedent. We 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, does not satisfy 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 13th day of June 1963.