

Award No. 11501

Docket No. MW-10724

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John H. Dorsey, 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 or about September 19, 1957, it assigned the work of constructing a new grade for a passing track extension between Mile Post 929 and Mile Post 931 to a General Contractor whose employees hold no seniority rights under the provisions of this Agreement.

(2) Each employe holding seniority in the Machine Operator's class or craft on the territory where the work was performed 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.

EMPLOYES' STATEMENT OF FACTS: On or about September 19, 1957, the work of constructing a new grade for a passing track extension between Mile Posts 929 and 931 was assigned to and performed by a General Contractor.

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

The employes holding seniority in the Machine Operator's 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 was filed in behalf of the Claimants. The claim was handled in the usual manner on the property and declined at all stages of the appeals procedure.

agreement provisions. Award No. 12673, First Division (Referee Curtis W. Roll), held:

"It has been repeatedly held by this Division that in the absence of a rule clearly establishing the right it will not be held that Carrier and employes contracted to pay and be paid two days' pay for one day's work. We find no such rule between the parties."

Award No. 11634, First Division (Referee John Thad Scott), held:

"Payment simultaneously for the service of the same employe under two distinct rules, or, as the Carrier contends, two days' pay for one day's work, or as in the instant case for no work, must be clearly 'spelled out' in the rules of the agreement involved. The rules of the schedules of the Conductors and Trainmen with this Carrier fail to so provide. See Award No. 5396 (Docket No. 7663)."

Award No. 12121, First Division (Referee Clifford W. Potter), held:

"From the entire record it is found that the employes 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 Employes or their duly accredited representatives.

The Carriers request ample time and opportunity to reply to any and all allegations contained in Employes' 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 Employes 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: This case was consolidated for purposes of briefing and Panel Discussion with Docket No. 10722 in which we have this date issued Award No. 11499. The issue herein presented relative to compliance with Article V, 1. (a) of the August 21, 1954 National Agreement is the same as the issue resolved in Award No. 11499.

For the reasons stated in Award No. 11499, which are incorporated herein by reference thereto, 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.