

Award No. 11898

Docket No. MW-11995

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Levi M. Hall, 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 May 15, 1959, it assigned the work of framing bridge and building material for Bridge Q 657.8, an overpass North of Denison, Texas, and for a steel bridge near Mile Post 498 just North of Muskogee, Oklahoma to the J. T. Moss Tie Company, St. Louis, Missouri, whose employees hold no seniority rights under the provisions of this Agreement.

(2) The employees holding seniority in the Bridge and Building Department on the old North Texas District, Seniority District No. 4, on the 1959 Seniority Roster, 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: For many years after this railroad was constructed and continuing until about 1918, bridge and building material was shipped directly to bridge and building gangs at the location of use and there, in a timber yard, Bridge and Building employees used cross cut saws, foot adzes and power augers to frame the material and make the installations in the bridge.

About 1918, the Carrier determined that bridge and building material should be framed, bored and treated at a central point for the purpose of conserving timber. The Carrier constructed, within the area of the Tie Plant at Denison, Texas, which was operated at that time as a company owned plant but was subsequently leased to an outside concern, a Mill and Material Yard to frame the material before being treated. Up until August 20, 1957, the Carrier had a complete wood working shop equipped to do any work using material made of wood, and a framing yard to lay out any heavy framing such as bridge decks and

Award 1225 of the Fourth Division, with Referee Coburn:

"It is well established that the Board is limited to an interpretation of the terms and conditions of the applicable agreement and that so long as its provisions are clear and explicit we may not vary or modify them by implication . . ."

Award 938 of the Fourth Division, with Referee Carey:

"To apply the meaning claimed by petitioner would be equivalent to revising the Agreement to provide that seniority is to be the controlling test in all cases. That this Board lacks that authority is not open to question."

Carrier therefore respectfully requests that the Third Division decline to be a party to this obvious attempt on the part of the Employees and Organization to secure a new rule — one which they have admitted by their own actions is not presently contained in the controlling Agreement, by completely rejecting and denying these alleged claims.

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

The Carrier requests 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: This case was consolidated for purposes of briefing and Panel Discussion with Docket No. MW-11183 in which we have this date issued Award No. 11897. 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. 11897.

For the reasons set forth in Award No. 11897, which are incorporated herein by reference thereto, we are constrained to dismiss this 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 Employes involved in this dispute are respectively Carrier and Employes 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 requirement 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 20th day of November 1963.