

Award No. 11903
Docket No. MW-11093

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 December 18, 1957, it assigned the work of constructing approximately 2,000 feet of track at M.P. 144, North Jefferson, Missouri to a General Contractor, whose employees hold no seniority rights under the provisions of this Agreement;

(2) The employees holding seniority in the Track Department on the territory where the work was performed each be allowed pay at their respective straight time rates 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: The factual situation involved in this claim is set forth in the General Chairman's letter dated July 22, 1958 to the Carrier's Assistant General Manager as follows:

"Facts: Commencing on or about December 18, 1957, the work of constructing or extending Industry tracks at or near MP 144, North Jefferson, Missouri was assigned to and performed by a general contractor.

"The employees holding seniority in the track department'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 track work. As a matter of fact the M-K-T Maintenance forces consisting of Section Foreman and his gang assisted in surveying the land purchased and locations for the tracks and, as a further fact, built a considerable portion of the longer track, there

diction to docket, hear and determine this claim. Carrier respectfully requests the alleged claim be dismissed or denied.

All data submitted in support of the Carrier's 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 issue presented herein by the Carrier relative to compliance with Article V, 1(a) of the August 21, 1954, National Agreement is the same as resolved in Award No. 11897 (Hall). Though the wording in the Statements of Claim is not identical in regard to the identity of the Claimants, the effect is exactly the same.

There is no identification of the Claimants in the Record other than that contained in the Statement of Claim.

As was stated in Award 11088 (Boyd): "These awards and others which have also been examined, disclose that Article V does not require that the 'employee involved' be named but he must be described as to be readily identifiable. As was said in Award 9205 the Claimant must be identified, if not named, in such manner as not to require further evidence. The reason for this is that the description of the employee involved ought not to give rise to a further dispute as to his identity."

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 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 20th day of November 1963.