Award No. 12299
Docket No. MW-11403

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Benjamin H. Wolf, 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 it assigned or permitted outside forces to perform bulldozer operator's work at Bridge G-703.4 beginning on or about June 11, 1958, and as a consequence thereof:

(2) Each employe holding seniority as a bulldozer operator on the old North Texas District, Seniority Roster No. 4, be allowed pay at the bulldozer operator's straight time rate for an equal proportionate share of the total number of man hours consumed by outside forces in performing the work referred to in Part (1) of this claim.

EMPLOYE'S STATEMENT OF FACTS: On or about June 11, 1958, the usual and traditional work of Maintenance of Way Department Bulldozer Operators was assigned to and performed by outside forces at Bridge G-703.4 near Gainesville, Texas. Specifically, the work consisted of the operation of bulldozers in the performance of the work of constructing an earth fill to replace six of the seven panels of that bridge which had been destroyed by fire during the early morning hours on June 11, 1958.

The employes holding seniority as Bulldozer Operators on the Old North Texas District, Seniority Roster No. 4, were available, fully qualified and could have expeditiously performed the bulldozer operator's work assigned to outside forces.

The agreement violation was protested and the instant claim filed in behalf of the claimants. The claim was handled in the usual and customary manner on the property and was declined at all stages of the appeals procedure.

The Agreement in effect between the two parties to this dispute dated

OPINION OF BOARD: The Petitioner herein claims that the Carrier violated the effective agreement when it contracted out bulldozen operator's work on or about June 11, 1958, and it asked that each employe holding seniority as a bulldozer operator in the seniority district where the work was performed be allowed pay for an "equal proportionate share of the total number of man hours consumed by outside forces in performing the work referred to . . . ."

The Carrier has objected to the consideration of this claim on procedural grounds as well as on the merits. Some of the former involve threshhold questions and must be resolved before any consideration is given to the merits of the claim.

The Carrier first objects because the claim was not filed within 9 months of its rejection by the highest designated officer of the Carrier as required by Section 1(c) of the August 21, 1954 Agreement. The Petitioner had filed a notice of intention to file a claim within the time limit. This question has been previously decided by this Board in favor of the position taken by the Petitioner. We consider ourselves bound by these prior awards, the latest of which is Award 12092.

The Carrier also objected to the claim because it does not name the Claimant as required by Article V, Section 1 (a) of the National Agreement of August 21, 1954. We have carefully examined all the awards submitted by the Carrier and the Petitioner on the subject. They are in sharp conflict and no consistent point of view can reconcile their difference.

Article V, Section 1 (a) does not require that the Claimant be named. It states:

> "All claims or grievances must be presented in writing by or on behalf of the employes involved, to the officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed, the carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employe or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances."

Article V was recommended as a rule in a dispute over whether a time limit rule should be adopted. The primary purpose was to set time limits, not to establish rules as to the identification of Claimants. The Carrier has made much of the mandatory character of the language used to support its argument that the name of the Claimant must be revealed. We agree that the language used was mandatory, but the thrust of its command is primarily that it be done within the time allotted, and in writing by an employe or a representative on behalf of any employe. The identification of the employe on whose behalf a claim is filed is not emphasized and understandably so because the Emergency Board that recommended it was not concerned with the problem of unnamed Claimants but rather the elimination of stale claims by setting a time limit. The Carrier would have the word "must" so overwhelm us that we are no longer judicious about those matters which neither language, nor history, nor common good sense persuade us are compulsory.

Labor agreements are negotiated to establish the conditions under which

men work, and labor organizations are the watchdogs of these conditions. They have an interest in seeing that these conditions are not evaded by the Carriers. It is not uncommon for labor organizations to have the right to seek enforcement of the agreement without being put to it to identify the particular employe aggrieved. Often the employer may be the only one able to identify the employes affected. We must not lose sight of reality in our zeal to ascribe meaning to words. Labor agreements are not obstacle courses full of pitfalls to trip the unwary. They should not be interpreted with such self-mutilating narrowness that contract violations go unpunished while each procedural slip is magnified into a fatal blunder.

We can agree that Claimants should be identified without requiring that they be named. A name is not a man but merely one form of identification of a man. Other reasonable identifications should be acceptable, the test being the pragmatic one: can he be found from the description. If the description is so diffuse, so ambiguous, so loose that a dispute would ensue as to whom it meant, it is an inadequate description. If, however, it so describes a man that he can be found without difficulty, all reasonable demands for specificity are satisfied.

The case at hand is an ideal example. The Carrier complains that the Claimant is unnamed and yet from the description used by the Petitioner, the Carrier not only could identify him but actually revealed his name during the exchange of arguments at the property. It was within the power of the Carrier to name the Claimant, whereas the Organization was able to do no more than describe him.

Once before, we said, in Award No. 11214: "It is not the purpose of the Railway Labor Act or the August 21, 1954 Agreement to dismiss disputes on mere technicalities. It is rather, the intent to resolve them on the merits unless it is clear that the essential procedural provisions have been completely ignored or that the Carrier is unable to ascertain the identity of the Claimants."

We believe that the Claimant has been sufficiently identified and that the claim should be decided on the merits.

The facts are that six of the eleven panels of a bridge, over which the main line track ran, were destroyed by fire, and the main line traffic was consequently brought to a halt. The Carrier contracted with a local company to supply three bulldozers to fill the creek under the destroyed bridge to divert the waters so that the bridge could be repaired. The only bulldozer owned by the Carrier in this territory was 140 miles away and in full use.

In our opinion, the Carrier faced an emergency and was, therefore, not in violation of its agreement in using a local contractor. The emergency nature of the incident was recognized by the Organization. Its General Chairman, in a letter to the Carrier dated October 7, 1958, said, "Bridge & Building gangs were available to repair the bridge in the same manner that such emergencies had heretofore been followed." (Emphasis ours).

The Petitioner's argument that the sole bulldozer operator should have been brought to the scene from 140 miles away, ignores the urgency that was present. The fact is that three nearby bulldozers were needed and used, not one bulldozer which was then occupied 140 miles away. In an emergency, a Carrier must be allowed great latitude in making on-the-spot judgments which should not be upset even if later, more leisurely reflection should prove them to have been erroneous unless bad faith was involved. Monday-morning quarterbacks do not run the team.

The Petitioner's claim that the Carrier had other bulldozers available was based on a notice of sale dated three months later which made no warranty of their condition. This is not sufficient proof that available equipment was near enough at hand, especially since the Carrier's assertion that there was only one bulldozer operator on the seniority roster at the time, was not refused by Petitioner.

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 Carrier did not violate the Agreement.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February, 1964.

CONCURRING OPINION

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Referee Wolf

We concur with the decision on the merits, but dissent to the finding that petitioner complied with Article V of the 1954 National Agreement.

/s/ **W. M. Roberts**
W. M. Roberts

/s/ **G. L. Naylor**
G. L. Naylor

/s/ **R. A. De Rossett**
R. A. De Rossett

/s/ **R. E. Black**
R. E. Black

/s/ **W. F. Euker**
W. F. Euker