

Award No. 12357
Docket No. MW-11456

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

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 during the month of October, 1958, it assigned the work of painting the interior of the second floor of the Passenger Station at Denison, Texas to a General Contractor whose employees hold no seniority rights under the provisions of this Agreement.

(2) Each employe holding seniority in the Bridge and Building Department 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.

EMPLOYEES' STATEMENT OF FACTS: During the month of October 1958, the work of painting a portion of the interior of the second floor of the Passenger Station at Denison, Texas was assigned to and performed by a General Contractor without negotiations and agreement with the employees' authorized representatives.

The work was of the nature and character usually and traditionally performed by the employes holding seniority in the Bridge and Building Department.

The employes holding seniority in the Bridge and Building Department on the territory where the work was performed were available, fully qualified and could have expeditiously performed the subject painting work, had the Carrier so desired.

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.

For each and all of the foregoing reasons the Carrier respectfully requests the Third Division to dismiss this purported claim, or to deny it in its entirety.

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: Carrier, timely, denied the claim, *inter alia*, for the reason that it does not identify "the employe involved" with such particularity as to comply with the requirements of Article V, 1. (a) of the National Agreement of August 21, 1954. If Carrier's position in this respect is held meritorious, we must dismiss the claim.

The issue is not novel. In Awards Nos. 11499 through 11504 and 11897, 11898 and 11903 we dismissed similar claims involving this same Petitioner and Carrier and the same issue, rules and arguments as in the instant case. For the reasons set forth in those Awards, which we incorporate 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 26th day of March 1964.