

Award No. 12502

Docket No. MW-11442

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Benjamin H. Wolf, 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 it failed to recall Weed Mower Operator L. J. Lively to service when a weed mower was placed in service on or about June 20, 1958.

(2) Weed Mower Operator L. J. Lively now be allowed pay at the Weed Mower Operator's rate for such time as an employee holding no seniority as Weed Mower was used to operate the weed mower referred to in Part (1) of this claim, retroactive sixty (60) days from September 26, 1958.

EMPLOYEES' STATEMENT OF FACTS: The Claimant has established and holds seniority as a Section and Extra Gang Laborer in the Track Sub-department and as a Weed Mower Operator on Seniority District No. 5, Old South Texas District.

On July 5, 1957, the claimant was selected and assigned by the Carrier to operate a weed mowing machine on the aforementioned seniority district. On July 8, 1957, the claimant requested and was granted a sixty day leave of absence, effective as of July 5, 1957, from Section 444, Pershing and from Extra Gang No. 13, Waco, for the purpose of operating the weed mower.

When the position of Weed Mower Operator was abolished on August 21, 1957, the claimant immediately returned to service as an Extra Gang Laborer on Extra Gang No. 13 as of that date. The Claimant worked as an extra gang laborer until November 26, 1957, when he was laid off on account of reduction in forces. The Claimant then filed his name and address and renewed same each sixty days thereafter to protect his accumulated seniority rights.

OPINION OF BOARD: The claim is too vague and indefinite. Claimant, who allegedly held seniority as a Weed Mower Operator, claims "for such time as an employe holding no seniority as a Weed Mower was used to operate the weed mower. . . ." Claimant failed to specify any date, any place, or any person who may have operated a weed mowing machine. If claim were allowed, it would be impossible to ascertain this information.

The record indicates that Carrier had discontinued the mowing of its right of way between stations and had not re-established the position of Weed Mower Operator. Section Foremen had cut weeds and grass around stations and at road crossings, each in his own section as he had always done before, intermittently and in spare time when other duties permitted.

The claim does not make clear whether this work was claimed as a violation or not. Carrier should not be required to guess as to the basis of the claim. If it is claimed as a violation, it would fail if based upon the Scope Rule which, being general, does not confer exclusive rights on the Weed Mower Operator without evidence that custom and tradition support it.

If based on seniority rights, it would fail because the weed cutting done by the foremen was not ever an exclusive function of a Weed Mower Operator.

If claim is based on work other than that done by the foremen, Carrier may justifiably be puzzled as to who, when and where.

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 is too vague and indefinite.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of May 1964.