

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

G. Dan Rambo, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the effective Agreement when, during July, August and continuing through September 11, 1959, it assigned work of operating weed mowers to employees who hold no seniority rights as Weed Mower Operators.

(2) Each employee holding seniority as a Weed Mower Operator 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 in the performance of the Weed Mower Operator's work referred to in Part (1) of this claim, retroactive to sixty days from September 14, 1959.

EMPLOYEES' STATEMENT OF FACTS: Beginning in July of 1959 and continuing through September 11, 1959, the Carrier assigned the work of operating Weed Mowers on the territory under the jurisdiction of Division Engineer E. P. Kennedy to employees who hold no seniority as Weed Mower Operators.

The employees holding seniority as Weed Mower Operators on that territory were available and could have expeditiously performed the Weed Mower Operator's work assigned to the other employees.

The Agreement violation was protested and the instant claim presented in behalf of the claimants. The claim was declined as well as all subsequent appeals.

The Agreement in effect between the two parties to this dispute dated September 1, 1949, together with supplements, amendments, and interpretations thereto is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: Under date of September 14, 1959, General Chairman E. Jones, of the Brotherhood of Maintenance of Way Employees, wrote Division Engineer E. P. Kennedy, alleging that on certain unspecified dates, unspecified employees of the Carrier other than Machine

Operators had performed an unspecified amount of work of cutting grass and weeds at unspecified locations on Carrier's right-of-way, and demanded that an unspecified number of unidentified Machine Operators be allowed an unspecified number of days pay at their respective straight time rates by reason thereof.

General Chairman Jones' letter of September 14, 1959 to Mr. Kennedy has been reproduced by the photocopy process, and an exact facsimile copy of that letter is attached hereto as Carrier's Exhibit "A", Sheets 1 and 2.

No valid claim having been presented in General Chairman Jones' letter of September 14, 1959, the Carrier, at every stage of the handling on the property, took the position that the said letter did not constitute the presentation of a valid claim under the provisions of Article V, Carriers' Proposal No. 7 of the August 21, 1954 Agreement. The Organization differed with the Carrier in this respect, of course, and there is now before your Division, in addition to the purported claim contained in General Chairman Jones' letter, the question of whether a labor organization is permitted, under the August 21, 1954 Agreement, to embark upon fishing expeditions of this kind, or whether they, also, are required to comply with the provisions of the August 21, 1954 Agreement with respect to presenting and handling claims.

Actual photocopy reproductions of all correspondence exchanged by the parties in the handling of this purported claim on the property are attached hereto as Carrier's Exhibit "A".

The controlling Agreement, No. DP-173, effective September 1, 1949, and the National Agreement of August 21, 1954 are on file with the Third Division, National Railroad Adjustment Board.

(Exhibits not reproduced.)

OPINION OF BOARD: Similar claims on identical facts and involving the same Carrier, Organization and Agreement have been before this Board on two previous occasions.

In Award No. 12236 (O'Gallagher) the Board held:

"Part 2 of the claim is a Scope Rule case, we find that the Scope Rule cited is general in character, and in such cases we have consistently held that in order to prevail the Claimant must prove by a preponderance of the evidence that the cutting of weeds has been historically, customarily and usually performed by Weed Mower Operators exclusively. This the Claimant has failed to do and for that reason Part 2 of the claim must be denied."

In Award No. 12502 (Wolf) the Board held:

"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 instant claim is deficient in both respects which separately proved fatal to the claims above cited. The burden of proof assumed by the Petitioner has thus not been met and the Claim must be denied.

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 Agreement has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of April 1966.