

Award No. 14638
Docket No. MW-15115

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David H. Brown, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**THE DENVER AND RIO GRANDE WESTERN
RAILROAD COMPANY**

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

(1) The Carrier violated the agreement when it assigned or otherwise permitted employees of the Sumsion and Sons Construction Company to perform the grading work on a line change near Mile Post 650 on the Carrier's right-of-way.

(2) Each employe* who holds seniority in the road machine department be allowed pay at his respective 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.

*L. A. Dean	N. Kleyweg
W. H. Williams	E. F. Gleason
C. J. Gleason	E. M. Pulley
L. M. Van Cleave	J. L. Whaley
M. Evans	J. H. McLaughlin
C. R. Hawley	E. M. Ross
R. R. Nichol	G. L. Bowers
W. M. Edgar	J. L. Wiswell
L. E. Ebaugh	B. Phillips, Jr.
E. W. Gilbert	V. J. Thompson
J. P. Brown	C. R. Adams
R. C. Phillips	C. C. Blair
G. A. Rich	L. D. Moore
W. H. Ogden	A. B. Carlson
F. A. Rich	R. G. Wort
H. O. Chappell, Jr.	M. R. McElvain
J. R. Carlson	L. E. Crandell
D. L. Drake	B. L. Moore

For these reasons, claim is denied.

Yours truly,

/s/ E. B. Herdman
E. B. Herdman
Director of Personnel"

August 10, 1964, H. C. Crotty, President of the Brotherhood of Maintenance of Way Employees, notified Third Division, National Railroad Adjustment Board, Executive Secretary S. H. Schulty of its intention to appeal the claim to your Board, thus bringing the claim before your Board.

The Agreement here involved is the Agreement between the parties effective February 1, 1941, including changes and interpretations to date of reissue, March 1, 1952, rates of pay effective February 1, 1951, and subsequent Memorandum Agreements in effect on the date of this claim on the property.

OPINION OF BOARD: Petitioners claim the work in question under Rule 1 of their agreement of February 1, 1941 — a Scope Rule of the broad and general type. Confronted with such a rule, we must find that the work in controversy has been historically, traditionally and exclusively reserved to the complaining craft; else Claimants cannot prevail. The record here is barren of such proof. Contrariwise, Carrier offers proof (R. 33) that on many prior occasions similar work was contracted to independent contractors.

Our conclusion is fully supported by prior awards concerned with the same parties and agreement as here. See Awards 11231, 11831 and 14525.

Since the claim must be denied on its merits for such obvious reasons, we see no reason to engage in a purely academic discussion of the procedural questions raised.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June 1966.

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