

Award No. 15159
Docket No. MW-14953

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nathan Engelstein, 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 Agreement beginning on or about May 13, 1963, it used individuals who do not hold any seniority as machine operators to operate weed mowers on Seniority District No. 4. (General Chairman's file 300-106; Carrier's file 2579.)

(2) Machine Operators L. W. Ainsworth, C. H. Carpenter, F. C. Winton, G. W. Morris, C. W. Volker, W. F. Gee, O. C. Bowers and Vicente Ramirez each be allowed pay "for the difference between the rate of the classified position upon which the individual claimant was working on the Weed Mower Operator's rate for such days as the individual claimants were not operating roadway machines and to continue until the violation is discontinued.

EMPLOYEES' STATEMENT OF FACTS: Beginning on or about May 13, 1963, the Carrier assigned the work of operating weed mowers on Seniority District No. 4 at Gainesville, Texas and at Waxahachie, Texas, to track foremen who do not hold seniority rights as machine operators. When the Carrier moved a weed mower from Gainesville, Texas to Denison, Texas on or about May 27, 1963, it continued to assign the work of operating that weed mower to a track foreman who does not hold seniority rights as a machine operator.

On May 14, 1963, Division Engineer J. T. Hunter issued Circular No. 252 bulletining two (2) positions of machine operator on Seniority District No. 4. On May 27, 1963, Division Engineer J. T. Hunter issued Circular No. 253 assigning Machine Operators C. H. Carpenter and F. C. Winton to these positions.

All of the subject work was performed on Seniority District No. 4. Each of the claimants has established and holds seniority rights as a machine operator on that district. The claimants could have performed all of the subject work had the Carrier assigned them to it.

Claim was timely and properly presented and handled at all stages of appeal up to and including the Carrier's highest appellate officer.

The Agreement in effect between the two parties to this dispute dated February 1, 1928, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: During the year 1957 the Carrier scrapped all of its on-track weed mowing machines and discontinued mowing weeds and vegetation on its right of way between stations. Since that time control of weeds and other vegetation on the right of way between stations has been by means of chemicals, and about the only weed mowing that has been performed has been around station grounds and near road crossings where necessary to provide an unobstructed view of the crossing.

Discontinuance of the mowing of weeds and vegetation between stations has reduced the amount of mowing necessary to the point that, generally, it has not been necessary to establish any positions of Weed Mower Operators during the growing season each year. The amount of mowing which remains has been, for the most part, taken care of by our Section Foremen, each on his own section or territory, operating off-track weed mowing machines which are, essentially, farm tractors with a rotary cutting blade mounted beneath the chassis and between the front and rear wheels. The work of cutting weeds and vegetation on their own sections has always been performed by section forces in the past, and has never been considered the exclusive work of any craft or class of employees.

In the instant case it is the claim of the Employees and Organization that the Carrier violated the agreement beginning on or about May 13, 1963, when it used individuals who do not hold any seniority as Machine Operators to operate weed mowing machines on Seniority District No. 4.

This claim was handled in the usual manner on the property up to the undersigned highest operating officer of the Carrier designated to handle time claims; has been declined by the undersigned, but has never been discussed in a conference on the property. For full information with respect to the reasons conference on the property was not held, attention is invited to the undersigned's letter dated December 9, 1963, and addressed to General Chairman E. Jones (Carrier's Exhibit A, Sheets 18 and 19).

The current agreement, No. DP-357, effective February 1, 1928 with revisions to September 15, 1961, is on file with the Third Division, National Railroad Adjustment Board.

Actual photocopy reproduction of the correspondence between the parties in connection with the instant claim are attached hereto as Carrier's Exhibit A.

(Exhibits not reproduced.)

OPINION OF BOARD: This dispute concerns a claim that Carrier violated the Agreement when beginning on or about May 13, 1963, it used Track Foremen who do not hold seniority rights as machine operators to operate weed mowing machines on Seniority District No. 4. Claimants who hold seniority rights as machine operators contend that under the provisions of Rules 1 and 4, operation of weed mowers is exclusively the work of machine operators.

Carrier denies that machine operators have an exclusive contractual right to perform the work of operating weed mowers. It also points out that this work has not been considered the exclusive work of any class or craft of

employees, for section foremen have performed the work of cutting weeds on their own section.

Carrier also contends that this Board does not have jurisdiction to adjudicate this dispute because a conference was not held on the property as required under the provisions of the Railway Labor Act.

The record shows that in a letter of September 18, 1963, the General Chairman requested that Carrier indicate a date for a conference. In another letter on the following day, September 19, 1963, the General Chairman suggested that this claim be discussed in a conference already scheduled for September 26, 1963, for the purpose of reviewing other matters. Carrier, at this conference on September 26, advised the General Chairman that it was agreeable to discuss the case in this conference but unfortunately was unprepared because it did not have sufficient time to complete the investigation of the claim. Carrier then suggested that the General Chairman request a date for a conference.

In a letter of December 9, 1963, in response to a letter of December 6, 1963 sent by the General Chairman in which he stated that he twice had requested a conference and none had been held and therefore he was referring the claim to the President of the Brotherhood, Carrier stated that it had not refused a conference and was agreeable to hold one upon request that a date be set for such conference. It pointed out that it did not designate a date in this letter because the General Chairman had already referred his file in this dispute to the President of the Brotherhood. The Brotherhood did not pursue a date for a conference in response to this letter of December 9, 1963. At the time of the letter, Brotherhood had about eight months of the nine month period permitted to arrange for a conference before appealing the claim. Thus the record is clear that Carrier did not refuse to hold a conference.

Since it is a jurisdictional requirement that a conference be a part of the usual manner of handling the dispute on the property under the Railway Labor Act, we hold that this claim be dismissed for lack of jurisdiction.

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 does not have jurisdiction over the dispute involved herein.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of January 1967.

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