



Award No. 15465
Docket No. MW-14549

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
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 outside forces to perform Tractor Bulldozer Operator's work from August 28, 1962 through September 26, 1962, in connection with:

(a) the relocation of track at the new Flex-A-Van facilities at Mannheim, Illinois

and

(b) the construction of new Coach Yard tracks at Tower A-3 in the Chicago terminal.

(2) Bulldozer Operator C. A. Meyer and all other Bulldozer Operators listed on the 1962 Lines East of Mobridge Seniority Roster (Rule 5(d)) each be allowed pay at his respective straight time rate for an equal proportionate share of total number of man-hours consumed by outside forces in performing the work referred to in Part (1) of this claim. (Carrier's Case No. D-1429)

EMPLOYEES' STATEMENT OF FACTS: During the period from August 28, 1962 through September 26, 1962, the Carrier without negotiation with or concurrence by the employees' authorized representative, assigned or otherwise permitted Contractor Ray Storm to perform grading and other work incidental to the relocation of a track at the new Flex-A-Van facilities at Mannheim, Illinois and the construction of new Coach Yard tracks at Tower A-3 in the Chicago terminal.

One hundred and seventy-eight (178) hours were consumed by the Contractor's employees in the performance of said work.

During this period, the Carrier had considerable equipment of the type used by the Contractor which was standing idle at various points on its property.

able. This fact can be evidenced by a review of copies of yearly contracts for the 10-year period 1952 through 1961 between this Carrier and the Roy Strom Excavating and Grading Company, which are attached to Carrier's Ex Parte Submission in Docket MW-13229, presently before your Board, and which are identified as Carrier's Exhibits A through N.

It is significant that claimant Meyer and " * * * all other Bulldozer Operators listed in the 1962 Lines East of Mobridge Seniority Roster * * * ", with the exception of H. L. Lambrechts, who was absent on sick leave and, therefore, is not under any circumstances a proper claimant, were fully employed and under pay on each of the dates on which contractor forces performed the work with which we are here concerned.

There is attached as Carrier's Exhibit A copy of letter written by Mr. S. W. Amour, Assistant to Vice President, to Mr. J. G. James, General Chairman, under date of February 12, 1963.

(Exhibits not reproduced.)

OPINION OF BOARD: It is argued by and in behalf of this Carrier that it has had in existence a contract with the Ray Strom Excavating and Grading Company to perform the work here subjected to claim since 1947, which is more than two years prior to the date of the effective agreement. This contract covered the use of Contractor's equipment when it was necessary for Carrier to have additional equipment, when the Carrier did not own the necessary equipment, or when the Carrier did not have the necessary equipment available.

A denial Award is required under such circumstances.

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 7th day of April 1967.

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