



Award No. 15895

Docket No. MW-14152

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Bill Heskett, 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 the work of installing bituminous concrete (blacktop) on station platforms at Ontarioville, Roselle, Itasca and Wooddale, Illinois.

(2) Each of the following named B&B employees be allowed pay at their straight time rates for an equal proportionate share of the total man-hours consumed by the contractor's forces in performing the work referred to in Part (1) of this claim.

William L. Couch	A. R. Sieverding
J. E. Boardman	E. C. Sowder
M. M. Lauterborn	F. W. Sowder
E. J. Leonard	Harry Webber
G. J. Schmaling	J. D. Smith
J. R. Post	E. E. Thayer
J. C. Reilly	J. E. Seidel
A. A. Calvert	V. C. Gibson
J. L. Meyer	R. S. Hunter
L. A. Couch	J. L. Klein

EMPLOYEES' STATEMENT OF FACTS: On November 25 and 28, 1961, bituminous concrete (blacktop) was applied to two (2) station platforms at Ontarioville, Illinois, which were ten (10) feet wide and one hundred thirty (130) feet long.

On November 25, 1961, bituminous concrete (blacktop) was applied to two (2) station platforms at Roselle, Illinois, which were ten (10) feet wide and three hundred five (305) feet long.

2. All of the claims, except R. S. Hunter, who was absent on sick leave and is not, therefore, a proper claimant in any event, were regularly assigned and working on each of the dates on which contractor forces performed the work with which we are here concerned with the exception of November 25, 1961, which was a Saturday and on which date the claimants did not work. It was account weather conditions and previous commitments that the contractor found it necessary to work on November 25, 1961.

It is significant also that at no time during the handling of the instant claim on the property did the employees cite any schedule rules or agreements or in any other way furnish a basis for and in support of the instant claim.

There is attached hereto 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 July 11, 1962.

(Exhibits not reproduced.)

OPINION OF BOARD: The question here is whether or not the Carrier violated the Agreement when it contracted out the installation of bituminous concrete (blacktop) on station platforms instead of using its B&B forces, they being the Claimants herein.

Two similar disputes, under this same Agreement, and involving the same parties, were considered by the Board in Awards 15539 (McGovern) and 15608 (Lynch). In both Award, the claims were denied.

It is well established that prior decisions affecting the same parties and Agreement will be followed in subsequent awards where the issues are identical unless such prior decisions are palpably wrong. We find no substantial error in Awards 15539 and 15608, and must find the principle of stare decisis applicable here, thereby denying the claims.

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 Carrier did not violate the Agreement.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of October 1967.

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