

Award No. 18306

Docket No. MW-18637

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Paul C. Dugan, Referee

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**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, without prior notice to General Chairman M. R. Martin as required by Article IV of the May 17, 1968 National Agreement, it contracted out the work of dismantling and removing Building C. D. 18 at Tacoma, Washington and of then leveling the area thereat. (System File D-1633/19-19).

(2) Bulldozer Operator C. V. England be allowed forty (40) hours' pay at his straight-time rate because of the violation referred to in Part (1) of this claim.

**EMPLOYES' STATEMENT OF FACTS:** The claimant holds seniority as a roadway machine operator within the Roadway Equipment & Machine Sub-department.

The Carrier determined that a Car Department building (CD 18) at Tacoma, Washington was no longer needed and decided that it should be removed. To this end, the Carrier contracted with an outside concern to dismantle and remove the building. The contractor utilized a bulldozer, operated by one of its employees, for forty (40) man hours to assist its other forces in the dismantling and removal work and to level and grade the area after that work had been completed. The contractor's employees, none of whom hold any seniority rights under the provisions of this Agreement, performed the aforesaid work on September 13, 16, 17, 18 and 19, 1968.

The dismantling and removal of buildings and the operation of roadway machines, such as cranes, **bulldozers**, etc., used in connection therewith, is work included within the scope of the Agreement and is reserved to employees of the Bridge & Building and the Roadway Equipment & Machine Sub-departments by Rule 46, which, insofar as it is pertinent hereto, reads:

R. W. Rhine Company began the work of removing Building CD-18 on September 16, 1968 and finished such work on September 19, 1968, consuming four days of actual demolition work.

Bulldozer Operator C. V. England, the claimant in the instant case, filed with the Carrier Officer who is authorized to receive claims in the first instance, time claim for dates September 13, 16, 17, 18 and 19, 1968, claiming 8 hours pay at the straight time rate of his position for each of the dates listed herein (40 hours total) account Carrier allegedly "violated the agreement when it contracted out the work of dismantling and removing Building CD-18 at Tacoma, Washington".

The work with which we are here concerned is not within the scope and application of the Maintenance of Way Agreement either by schedule rules or past practice nor is it work that can be claimed under other agreements. Therefore, there occurred no violation of any agreement between the parties here in dispute when the work here involved was contracted.

The claimant was fully employed and under pay "beginning September 13, 1968" therefore there was no lost earnings on his part.

Attached hereto as Carrier's Exhibits are copies of the following letters:

Letter written by Mr. L. W. Harrington,  
Vice President-Labor Relations, to Mr.  
Max R. Martin, General Chairman, under  
date of January 30, 1969 ..... Carrier's Exhibit "B"

Letter written by Mr. L. W. Harrington,  
to Mr. Martin under date of April 2, 1969 .... Carrier's Exhibit "C"

Letter written by Mr. L. W. Harrington,  
to Mr. Martin under date of June 18, 1969 .... Carrier's Exhibit "D"

(Exhibits not reproduced.)

**OPINION OF BOARD:** The issue herein is similar to the issue involved in Award 18305, involving the same parties to this dispute and for the reasons stated therein in said Award 18305, we will sustain paragraph (1) of the Statement of Claim and deny paragraph (2) of the Statement of Claim.

**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 violated in accordance with the Opinion and Findings.

AWARD

Paragraph (1) of the Statement of Claim is sustained.

Paragraph (2) of the Statement of Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 25th day of November 1970.