

Award No. 19020
Docket No. MW-17315

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Thomas L. Hayes, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**CHICAGO, ROCK ISLAND AND PACIFIC
RAILROAD COMPANY**

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

(1) The Carrier violated the Agreement, when, on April 8, 1966, it assigned or otherwise permitted Mechanical Department forces to clean the right-of-way "between the west fueling station and Mueller elevator" at Goodland, Kansas. (System file L-126-933/10-0-174)

(2) The section foreman and sectionmen, who were assigned to Section No. 334 at Goodland, Kansas, each be allowed pay at their respective straight time rates for an equal proportionate share of the nine (9) man hours consumed by the Mechanical Department forces in performing the work referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: The factual situation involved in this dispute is fully and accurately set forth in a letter reading:

"June 6, 1966
FILE 10-0-174

Mr. M. C. Blazer,
Assistant Division Engineer-Track
Chicago, Rock Island & Pacific Railroad
Des Moines, Iowa

Dear Sir:

We have been advised that the Mechanical Department forces, Foreman Roady, Machinist Mershon and Electrician Furry, were instructed to and did clean the company right-of-way between the west fueling station and Mueller elevator. This work involved trimming trees, piling brush, picking up weeds and debris, piling same and burning it and also burning the weeds and grass on the right-of-way. This work was performed on April 8, 1966 and involved a total of nine (9) hours work.

5. The grievance procedures followed and progression of the instant dispute were timely and in accordance with the applicable rules in effect on this property and the Railway Labor Act, as amended.

OPINION OF BOARD: Organization contends that Mechanical Department forces cleaned the company right-of-way between the west fueling station and Mueller elevator. This work involved trimming trees, piling brush, picking up weeds and debris, piling same and burning it, and also burning the weeds and grass on the right-of-way. Organization says the work was done on April 8, 1966 and involved a total of nine hours work.

The Employees further contend that the section men assigned to Section No. 334 at Goodland, Kansas were available and could have performed the work assigned to the Mechanical forces. These duties, they allege, have always been performed by Maintenance of Way forces within the Maintenance of Way Agreement.

The Organization argues that Carrier has never successfully challenged the Organization's statement that trimming trees, brush, picking weeds and burning right-of-way has always been done by Maintenance of Way Agreement.

Carrier argues that the Mechanical forces are to keep clean and in a safe condition the area surrounding the fueling station and submits that this is a Mechanical Department facility not a Maintenance of Way facility. The Organization asserts that the work done was in the right-of-way where no buildings, structures, or cranes are located. We find the record inconclusive on the point.

Looking at the case as a whole, we find that the Employees have made a convincing argument that work such as trimming trees, brush, picking weeds and burning right-of-way belongs to Maintenance of Way employees. The contention of Carrier that Mechanical forces had put part of the debris where the work was performed was never explained nor did the Carrier ever show that the debris was unrelated to the labor done on the trees, brush and weeds—work that we find belongs to Maintenance of Way employees.

Carrier indicates that the disputed work took eight hours and since it should have been assigned to the Maintenance of Way rather than Mechanical forces, we therefore award the foremen and section men assigned to Section 334 at Goodland, Kansas eight hours at their respective pro rata rate of pay, said hours to be divided equally among them.

The American Railway Supervisors Association, the International Association of Machinists and Aerospace Workers and International Brotherhood of Electrical Workers were served a Third Party notice but disclaimed any right to the involved work.

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.

AWARD

The Award is sustained in the manner and to the extent set forth in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1972.