

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19252
Docket Number MW-19224

Arthur W. Devine, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(The Denver and Rio Grande Western Railroad Company

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

(1) The Carrier violated the Agreement when it assigned a water service employe instead of furloughed Truck Driver R. McKendrick to perform truck driving work at Helper, Utah on December 22, 1969. (System File D-9-16/MW-6-70)

(2) Truck Driver R. McKendrick be allowed eight (8) hours' pay at the truck drivers' straight time rate because of the violation referred to in Part (1) hereof.

(3) The Carrier shall also pay the claimant six (6%) percent interest per annum on the monetary allowance accruing from the initial claim date until paid.

OPINION OF BOARD: The record shows that Carrier's B&B forces at Thompson, Utah had need for a grouting machine. On December 22, 1969, the Carrier utilized the services of a water service employe operating a truck to tow the grouting machine from Helper, Utah to Thompson, Utah. The Claimant is a furloughed B&B Department truck driver who also holds seniority rights within the B&B Sub-department as a B&B helper.

The Carrier contends that the claim should be dismissed, asserting that the claim, as submitted to the Board, is not the same claim as handled on the property. The claim before the Board is substantially the same as handled on the property. The question throughout was one of an employe other than a B&B employe operating truck in transporting B&B equipment. The Carrier has not been misled, nor has the claim been enlarged upon. Carrier's request that claim be dismissed as procedural defective is denied. (18785-Devine)

As to the merits of the dispute, the grouting machine was in transit for use by the B&B Department employes at Thompson, Utah. We are guided in our findings here by Award 12795, between these parties, where it was held equipment and material come within the jurisdiction of the B&B gang only after it is delivered for use of the gang, and not while it is in transit. Therefore, the claim is denied.

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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 the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 31st day of May 1972.