Award No. 3234
Docket No. 3074
2-SP-PL-EW-'59

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee D. Emmett Ferguson when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 114, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.—C. I. O. (Electrical Workers)

SOUTHERN PACIFIC COMPANY (Pacific Lines)

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement the Carrier has at Roseville, California,

a) improperly denied Electrician Helpers James F. Thompson and R. E. Blevins seniority as Crane Operators.

b) has improperly compensated Electrician Helpers James F. Thompson and R. F. Blevins at Electrician Helpers' rate of pay while assigned to operate electric traveling crane.

2. That accordingly the Carrier be ordered to

a) establish a Crane Operator's seniority roster and give the aforementioned employes seniority as Crane Operators as of the date they were first assigned to operate traveling electric cranes.

b) Compensate the aforementioned employes for the difference between Electrician Helpers' rate of pay and Electric Crane Operators' less than 40 ton capacity rate of pay for February 22, 1957 and each day thereafter that they have been so assigned to operate electric cranes.

EMPLOYES' STATEMENT OF FACTS: The Southern Pacific Company, hereinafter referred to as the carrier, maintains at Roseville, Cali-

at no point does petitioner refer to even one agreement provisions in support of the claim here under discussion. Beginning with the local chairman's letter (carrier's Exhibit A) submitting the claim to carrier's master mechanic it is asserted that carrier has improperly classified and compensated claimants and request is made that they be reclassified and compensated accordingly, effective February 22, 1957, and all time subsequent thereto. Local chairman also requested in that letter that crane operator seniority roster be established at Roseville and that claimants' names be placed thereon with seniority date as of the date they were first assigned to operate cranes of less than 40 tons capacity. The general chairman's appeal to carrier's assistant manager of personnel (carrier's Exhibit A-1) is no more illuminating; in fact, it says even less.

It is carrier's position herein, as it has been throughout the handling of this claim, that there is no rule of the current agreement, understanding or other authority, which provides for the reclassification or rate of pay here claimed for employes who operate the cranes involved. The operation of said cranes has never been considered exclusively the work of crane operators, nor for that matter have employes required to operate said cranes been selected exclusively from the electrical workers craft. Payment of crane operator's rate as contemplated by the controlling agreement is confined to operators of electric traveling cab-operated cranes.

CONCLUSION

Carrier asserts the instant claim is entirely lacking in agreement or other support and if not dismissed, requests that it be denied.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

This claim is defended first on the ground that consideration is barred by the provisions of the August 21, 1954 Agreement, particularly Article V Section 1 (c) and Section 2.

From the undisputed facts it appears that beginning in 1954 separate claims for Helpers Thompson and Blevens growing out of the same occurrence and demanding the same relief as in the present case were progressed on the property, resulting in a final denial by the company on November 8, 1956. This denial was answered by the employes, on March 31, 1957, withdrawing the case without prejudice, and promising to file a new claim under Rule 38 (f), which rule as revised became effective January 11, 1957.

The instant case, in which notice was filed March 5, 1958, is the fulfillment of that promise. The question now is whether we are barred from considering it, because of the provisions of the August 21, 1954 Agreement. The sections cited by the company provide "All claims . . . involved in a decision by the highest designated officer shall be barred unless within 9

months . . . proceedings are instituted . . . before the . . . N.R.A.B." (may be extended by agreement)—and—"Claims which arose or arise out of occurrences prior to the effective date (etc.) and claims . . . filed prior to the effective date of this rule . . . must be ruled on or appealed . . . within 60 days after the effective date of this rule and if not . . . the claims shall be barred or allowed as presented, as the case may be, except that . . . claims . . . on which the highest designated officer . . . has ruled prior . . . a period of 12 months will be allowed . . . for an appeal to be taken to the appropriate board of adjustment.

We conclude that this docket is an effort to continue the old 1954 dispute. The submission to this Division was made later than the limits provided by the rule and we are bound to enforce its provisions.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 10th day of June 1959.