

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**Third Division**

Arthur M. Millard, Referee

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES  
SOUTHERN PACIFIC LINES IN TEXAS AND LOUISIANA**

**STATEMENT OF CLAIM.—**

"During the month of October, 1935, the following Section Laborers on the Dallas Division, as herein listed, Willie J. Huddleston, A. J. Owens, Owen McBride, Andres Leak, Jim Polk, Lafayette Ticer, Will Hill, Otto Roberts, J. A. Chenault, Alf Smith, T. W. Chenault, Arl Logan, R. B. Thomas, Louis Carza, S. R. Montoya, Melesio Rivera, Juan Madrigal, Gregoria Valencia, and Demetrio Aldana, each filed claim for four (4) days' pay for time which they were required to lose during the month of October, on account of said Section Laborers being required to lay off certain days of each week during the month. The above-named employees are only a part of those involved, there being one hundred sixty-three (163) Laborers involved, as shown in orders issued as listed on pages 1 and 2 of Exhibit No. 1, and approximately seventy-five (75) other Laborers on Roadmaster Lesser's district that are not herewith listed, which would make a total of two hundred thirty-eight (238) Laborers involved.

"The Committee claims that all these men involved in this lay-off should be paid for time lost."

**STATEMENT OF FACTS.—**In their ex parte submission the employees stated the facts as follows:

"On September 30, 1935, Roadmasters W. C. Lamb and R. M. Perdue issued an order, effective October 1st, to all foremen on the Denison and Ennis Districts, which is known as the Dallas Division, which comprises three (3) Roadmasters' Districts (however we do not have the order issued by Roadmaster Lesser, but there were approximately seventy-five (75) men on his district), instructing twelve (12) section gangs employing forty-seven (47) laborers to lay off on Wednesdays of each week and eleven (11) section gangs employing forty-five (45) laborers to lay off on Thursdays of each week on Roadmaster Lamb's District and on Roadmaster R. M. Perdue's District there were ten (10) section gangs employing thirty-nine (39) laborers that were required to lay off on Wednesdays of each week and nine (9) section gangs employing thirty-two (32) section laborers that were required to lay off on Thursdays of each week, making a total of nineteen (19) section gangs involved on his district, and making forty-two (42) section gangs involved and a total of one hundred and sixty-three (163) men, as listed in Exhibit No. 1, pages 1 and 2.

"The one hundred sixty-three (163) section laborers that were involved on Roadmasters Lamb's and Perdue's Districts were employed by the Carrier as section laborers at the rate of twenty-six (26) cents per hour, and Roadmaster Lesser's District, which includes approximately seventy-five (75) section men that are not listed in the exhibits, were also involved in this lay-off.

"Each employe was required, according to instructions issued by Roadmasters W. C. Lamb and R. M. Perdue, to lay off without pay one day each week during the month of October for four (4) consecutive weeks, causing a loss to each section laborer each week of \$2.08, or a total loss of \$8.32 for the four (4) consecutive weeks while the order was in force,

"As shown by the exact language of Section (b), that rule relates only to reduction in force. The distinction between a reduction in force which is not involved in this case, and a lay-off which is involved, is now so generally well known and recognized, that we will not labor that point at this time.

"Article V, Section (1), reads as follows:

"REDUCTIONS.—SECTION (1). Gangs will not be laid off for short periods when proper reduction of expenses can be accomplished by first laying off the junior men. This will not operate against men in the same gang dividing time."

"The facts show that the carrier, in making necessary reductions in expenses, first laid off as many junior men as it was possible to lay off without destroying the efficiency of the various gangs; and thereafter when further reduction of expenses was necessary, the only method the carrier could follow in making necessary reductions in expenses was to lay off various gangs one day each week. It seems clear to us that the action of the company is in no wise prevented by the above rule or any other rule that can be found in the schedule. The question of whether or not proper reduction of expenses can be accomplished by first laying off the junior men is a managerial question and it was determined in this case by the Division Superintendent, the Division Engineer, and the roadmaster, all practical railroad men, who determined the point below which the various gangs could not be reduced without destroying their efficiency. Gangs on the entire division were cut to an irreducible minimum before the gangs were laid off one day each week. We do not understand that the organization will contend that it is not within the province of the management to determine the proper method of reducing expenses. As shown in our statement of facts, General Chairman Reddick took the arbitrary position that Section (1) of Article V prevents the company from laying off any gang whatsoever under any circumstances. He even went to the extreme of stating that if only two men were assigned to any particular gang, that gang could not be laid off for one day each week but that the junior man would have to be dispensed with. In other words, he took the position that in every case a reduction in expenses would have to be made by laying off junior men and not by laying off entire gangs.

"The only limitation placed upon the right of the company to lay off gangs is that gangs will not be laid off for short periods when proper reductions of expenses can be accomplished by first laying off the junior men. The converse of that rule is that gangs may be laid off for short periods when proper reductions of expenses cannot be accomplished by laying off the junior men. That is precisely what was done in the instant case. Proper reduction of expenses could not be accomplished by laying off the junior men and accordingly gangs were laid off one day each week to accomplish that purpose. That action did not constitute a reduction in force as a lay-off and reduction of force are entirely separate and distinct.

"Efficient service is secured where gangs of minimum personnel are laid off in order to reduce expenses that could not be secured if the reduction was made by laying off the junior man to the extent of reducing the gang to a number of men that could not perform the required service. It does not take an expert to see that far more service and more efficient service can be obtained from four men working five days per week than from three men working six days per week. The same is true of gangs composed of a different number of men, the minimum number for each gang being governed by many and varied operating problems."

**OPINION OF THE BOARD.**—The issue in this claim is the contention of the Brotherhood of Maintenance of Way Employees of the Southern Pacific Lines in Texas and Louisiana that the carrier violated certain provisions of the existing agreement between the parties, in reducing the number of working days from six (6) days per week to five (5) per week, for certain gangs of section laborers on the Dallas Division during the month of October 1935.

The employees have listed nineteen laborers by name out of certain sections in which it is claimed one hundred and sixty-three laborers were required to lay off for four (4) days during the period outlined, and state that an additional seventy-five (75) laborers from another district were involved, but not listed, making a total of two hundred and thirty-eight (238) for whom claim is made for lost time.

In support of their contention the employees quote Sections (a), (b), and (c) of Article II entitled "Seniority Rules," and Section (1) of Article V, "Reductions," of the agreement between the parties.

In the original submission on the merits of this claim, the carrier contended that the handling of this dispute was not properly a subject to come before this Board and quoted Section 2, paragraph "Second" and Section 3, Article (1) of the Railway Labor Act, as amended, as supporting their contention. The Board, however, rules that inasmuch as this claim is based upon a dispute between the Brotherhood representing the employees, and the carrier, as to the application of certain specified rules of the agreement to the subject at issue, the claim has been properly presented, and in accordance with the provisions specified of the Amended Railway Labor Act, approved June 21, 1934, the case is properly before this Third Division of the National Railroad Adjustment Board.

Sections (a), (b), and (c) of Article II of the agreement between the parties apply generally to seniority and establish the basis upon which seniority is fixed, the manner in which seniority is to be applied when forces are reduced, and restrict the seniority rights of laborers to the gang with which they are employed.

Article V, Section (1), upon which the Brotherhood state they principally rely in support of this claim, is intended to govern reductions in forces when entire gangs are laid off to meet the economic or other requirements of the carrier.

The fact that Article V, Section (1) was written into the agreement would indicate that periods had existed when, to meet the economic or other requirements of the carrier's operation, entire gangs had been laid off and that similar conditions would undoubtedly recur, and this understanding was undoubtedly conceded by the Brotherhood when the agreement was ratified. For the protection of the employees, however, and as a means of maintaining so far as it could be done the seniority rules of the agreement, as outlined in Sections (a), (b), and (c) of Article II, that part of Article V, Section (1) having reference to the layoff of entire gangs was qualified by the statement that such action could or should only be taken when the proper reduction of expenses cannot be accomplished by laying off the junior men.

In their submission the employees contend that to make the reductions required during the period covered by this claim, section gangs might have been retained on a six day basis by reducing the number of men in the gang, or by laying off the junior men or men, a sufficient number of days to equal what under other conditions would be equivalent to laying off the entire gang.

In the makeup, however, of Section (1) of Article V, the fact is evidenced that as periods and conditions exist when a proper reduction of expenses can be accomplished by laying off junior men, so on the other hand is the fact evidenced that periods will exist and conditions will arise when reductions cannot be accomplished in this manner and retain the efficiency of the gang, and the only recourse left to meet the necessary reductions will be by laying off the entire gang. In other words, the size of the crew or the number of men in a gang is undoubtedly determined by the character and amount of work to be done and the conditions evidenced in the division to which the crew is assigned. Under these conditions gangs may at times be reduced to advantage by the lay-off of individuals, and on the other hand and under the same method the gang could be reduced by the layoff of individuals to a point of inefficiency where the final results would be equivalent to laying off the entire gang.

In the application and proper interpretation of the rules or sections of the agreement cited, the carrier is required to lay off junior men when a reduction in a gang or gangs is to be made, when the character of the work will permit and the proper reduction can be accomplished by doing so.

In the present instance the carrier has shown that with the insistent and necessary requirements for economy the section gangs on the Dallas and other divisions have been systematically reduced over a period of years, and from what might be termed the highest peak of 1929 to the minimum number of men employed in the gang up to and including 1935. During this serious and almost steady reduction of forces, due to economic conditions, the carriers submit that the seniority rules have been observed and that in the layoff of junior men during the period indicated the section gangs have been reduced to a point where further layoffs would limit or retard the efficiency of the gang or gangs affected, and defeat the economic object aimed for.

No evidence has been submitted in this claim indicating that the action taken by the carrier's representative was other than the requirements of the management to meet an economic condition, nor has any evidence been introduced indicating any direct instance where the seniority rules have not been properly observed and that the gangs affected could have been reduced by the layoff of junior men without affecting their efficiency. Together with this, no evidence has been introduced to identify the displacement of any senior man by a junior or to determine whether any of the employees named in the claim, together with those not named, were senior to others in the same gang; and without specific information of this character the Board can only discuss the principles involved both as they apply to the rules and seniority.

In the final analysis the immediate decision as to the application of the rules and the manner in which the proper reduction of expenses is to be accomplished rests with the representative or representatives of the carrier in charge of the gangs and supervising the divisions or departments affected.

Under these circumstances the Board finds no evidence of any violation of the existing agreement between the parties. At the same time the Board directs that should any further evidence develop by which a violation of any of the principles or rules discussed and outlined in this opinion may be adequately determined in connection with the claim at issue, nothing in this opinion shall affect the resubmission of this claim for further consideration.

**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 Board finds no evidence of any violation of the existing agreements between the parties.

#### AWARD

Claim denied, with privilege to reinstate under conditions outlined in last paragraph of the Opinion of the Board.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest: H. A. JOHNSON  
*Secretary*

Dated at Chicago, Illinois, this 9th day of September 1937.