Award No. 895
Docket No. MW-801

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Dozier A. DeVane, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

WABASH RAILWAY COMPANY

STATEMENT OF CLAIM: "Claim of William Hunt, W. E. White, et al, employed in the B&B Department, Moberly Division, for payment at their regular rate of pay on January 28, 29, and 31st, 1938, on which dates the entire B. & B. force on the Moberly Division was erroneously laid off."

EMPLOYES' STATEMENT OF FACTS: "On January 24th, 1938, instructions were issued to the several B. & B. gangs, Moberly Division, that all hourly rated employes lay off on January 28th, 29th and 31st.

"At that time the B. & B. Department was divided into four crews and consisted of, in addition to one foreman for each crew, 4 lead men, 21 carpenters and 8 carpenter helpers. Those affected and laid off were:

Lead Men

G. W. Bailey
J. E. Campbell
William Lewis
P. A. O'Connor

Carpenters

P. C. Ballow
Thomas Harold
W. E. Persinger
G. H. Capps
J. M. Bailey
M. Baschen
M. M. Pearman
W. R. Stoner
Roy Tory
A. L. Hunt
Morell Horne
J. T. Pryor

Carpenters—cont'd

W. E. White
Earl Spriggs
R. G. Barker
J. J. Waters
George Herring
B. D. Mitchell
A. L. Twyman
Arthur Self
C. A. McCormick

Carpenter Helpers

T. P. Gillespie
C. E. Porter
A. C. Hunt
William Hunt
Howard Hill
Claud Grooner
Frank Logan
A. A. Schaefer

POSITION OF EMPLOYES: "Rule No. 3 of agreement in effect between the Wabash Railway and the Brotherhood of Maintenance of Way Employes reads:

'When force is reduced the senior men in the sub-department of the seniority district capable of doing the work shall be retained.

erroneously laid off on January 28, 29 and 31, 1938 is not a correct statement because the laying off of the employes in question on January 28, 29 and 31 was not in violation of the rules of the Schedule for Maintenance of Way Employes.

"The submission of this case to the Board is clearly an attempt on the part of the committee to secure a new rule in a manner contrary to the provisions of Section 6 of the Railway Labor Act. The granting of new rules is a power which the National Railroad Adjustment Board does not possess under the law by which it was created, therefore, the contention of the committee should be dismissed and the claim denied."

OPINION OF BOARD: The claim in this case is for compensation to senior employes of the B. & B. Department, Moberly Division, for three days in January, 1938, on which days the entire B. & B. force was laid off. The claim is prosecuted under Rule 3 of the agreement between the parties and Item 2 of the Mediation Agreement of August 5, 1937, Case A-395.

The record is quite incomplete. It does not show that while the claim was being handled on the property the employes ever suggested that Item 2 of the Mediation Agreement of August 5, 1937, was involved. Item 2 of said Mediation Agreement provided that all share-the-work practices however established would be terminated on request of the General Chairman. The record does not show that the General Chairman ever gave the required notice of his desire to make said Item 2 effective on this property. The question before the board is whether the claim should be denied upon the present record or the case remanded to the parties for further handling on the property.

It is the opinion of the Board that the case should be remanded to the parties for further handling on the property. The employes cannot hope to get any redress under Item 2 of the Mediation Agreement unless they can show that they have complied with its requirement as to notice. Since, however, the claim in this case is in part predicated upon said Item they should be accorded an opportunity to develop the facts. Assuming they have not given the required notice they gain no advantage on this score by reason of the case being remanded. If the required notice has been given the employes are entitled to have the record show this fact. The case will be remanded to the parties.

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 employes involved in this dispute are respectively carrier and employes 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 account insufficient evidence the case must be remanded.

AWARD

Case remanded in accord with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 21st day of July, 1939.