

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Royal A. Stone, Referee

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**

**SOUTHERN PACIFIC COMPANY (PACIFIC LINES)**

**STATEMENT OF CLAIM:** "Claim that Mr. Victor Moreno should be accorded a seniority date in the class of trackwalker and should be shown on the Los Angeles Division seniority roster in this class in the Track Sub-department with seniority on a division basis."

**EMPLOYEES' STATEMENT OF FACTS:** "Mr. Moreno's seniority date in the class of track laborer is shown on the seniority roster as of January 8, 1918, on the Ventura Roadmaster's District, Los Angeles Division.

"On or about January 2, 1933, Mr. Moreno was assigned to the position of trackwalker, Section 82, Saticoy, being promoted to such position from the class of track laborer, same section. Mr. Moreno's seniority has been continued in the class of track laborer and he has not been accorded a seniority date as trackwalker.

"The employees requested that Mr. Moreno be accorded seniority in the class of trackwalker on a division basis.

"Carrier declined to comply with employees' request."

**POSITION OF EMPLOYEES:** "The claim here involved is the result of a direct violation, by the Carrier, of Rules 1, 3, 5 and 8 of the current Agreement between the Southern Pacific Company (Pacific Lines) and the Brotherhood of Maintenance of Way Employees, effective September 1st, 1926, copies of which are on file with this Board, and which is hereby made a part of this submission by reference.

"Rule 1 provides that seniority of employees begins at the time their pay starts in the class in which employed. Trackwalkers are a class as contemplated by the Agreement. As conclusive proof that this is true, may we point out that, Item 11 of the 1923 Wage Agreement specifically sets them out as a class, they are indicated as a class in Rule 27 of the current Agreement, the Carrier's Maintenance of Way Book of Rules and Regulations prescribes regulations for trackwalkers as a class, and they are in every sense a separate class.

"Item 11 of the 1923 Wage Agreement reads as follows:

'11. Trackwalkers:

- (a) Who, on May 31st, had differential over rate paid laborers in locality employed....1¢ per hour
- (b) Who, on May 31st, did not have differential over laborers in locality employed, to be increased over new "Standard" rate for laborers in such locality, by .....2¢ per hour.'

The Agreement does not provide that a seniority roster, with seniority rights on a division basis, be maintained for trackwalkers, for reasons heretofore explained.

"The attention of the Board is invited to the fact that Mr. Victor Moreno has not been employed as a trackwalker on Section 82, or any other section on the Los Angeles Division, since January 31, 1939, and the further fact that no laborer designated as a trackwalker has been used on Section 82 since March 15, 1940.

"The General Chairman, in handling the claim with the Carrier has relied upon Agreement Rules 1, 3 and 8. The Carrier does not dispute the applicability of Rules 1 and 3 and insists that these rules have been properly applied in according Mr. Moreno a seniority date as laborer on Section 82 in conformity with Rule 6 heretofore quoted. The Carrier does not agree and therefore disputes the claim of the Organization that Rule 8 has any application whatever, for the reason that trackwalkers are section laborers in every particular and always have been, even long before the execution of any agreement with the Maintenance of Way Organization, therefore, cannot be of a higher rank than laborers so as to create separate and independent seniority rights on a division basis under the provisions of Agreement Rule 8.

### CONCLUSION

"As it has been clearly shown that the claim is without merit, that the Agreement rules cited by the Petitioner do not support the claim in any respect, and the further fact that the Carrier has properly applied all of the provisions of the Agreement, Carrier requests that the Board deny the claim in every particular."

**OPINION OF BOARD:** What is wanted is the creation of a seniority class for trackwalkers. Seniority classes are fixed ordinarily by agreement. In some cases they may be the result of custom also. If new ones are to be created it should not be by unilateral action but rather by negotiation and agreement. For long, and up to the initiation of this claim, trackwalkers on the Southern Pacific System have been classified as laborers, each one as a member of his own gang. The position in many cases is temporary and the result of emergency. Under other circumstances the position may be more or less permanent. But in any event it is filled by a laborer from the proper gang although he is paid at a higher rate than the other laborers. It does not seem proper under the circumstances of this case to classify the position of trackwalker separately for purposes of seniority. See Award 1389, Docket MW-1416.

**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 employe involved in this dispute are respectively carrier and employe 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 no violation of the Agreement is shown.

### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 16th day of April, 1941.