

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 of the General Committee of the Brotherhood of Maintenance of Way Employees that employees holding seniority in the classes of gardener, yardman, track watchman, lampman and parkman, should be shown on the Los Angeles Division seniority rosters in their respective classes in the Track Sub-department with seniority on a division basis."

EMPLOYEES' STATEMENT OF FACTS: "There exists on the Los Angeles Division, of the Southern Pacific Company, (Pacific Lines) several positions classified as gardener, yardman, track watchman, lampman and parkman. The seniority rosters for such positions have been prepared by roadmasters' districts thus restricting the seniority of the employees to such districts.

"The Brotherhood contended these seniority rosters should be prepared on a division basis. The Brotherhood contended that Rules 1, 3, 5, 8 and 11 support their contention.

"The Carrier declined to issue rosters by classes on a division basis."

POSITION OF EMPLOYEES: "The claim here involved is the result of a direct violation, by the Carrier of Rules 1, 3, 5, 8 and 11 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 are hereby made a part of this claim, by reference.

"Rule 1 provides that seniority of employees begins at the time their pay starts in the class in which employed. The positions involved here constitute several occupations which are separate classes. This is not denied by the Carrier.

"Rule 3 provides that seniority rights of employees are confined to the Sub-department in which employed. Since all the classes involved work under the jurisdiction of roadmasters and/or track foremen, their seniority should be and is held in the Track Sub-department.

"Rule 5 provides that seniority of employees in a Sub-department shall be carried by classes. These positions constitute a class, therefore, employees assigned to them or holding rights to be so assigned, should have their names carried on such a classified roster.

"Rule 11 provides that seniority rosters of the employees in each Sub-department and class by seniority districts shall be separately compiled.

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: As in Award 1388, Docket MW-1415, what is wanted is the creation of new seniority classes for gardeners, yardmen, track watchmen, lampmen, and parkmen for the Los Angeles Division. The order of priority of the proposed new classes is not indicated.

In the Referee's opinion, all of the positions in question are those of laborers and, until the present rules are amended to create one or more of the suggested new classes, they should be continued to be classified as such.

All the positions in question are held by sectionmen, their selection made and work directed by the foreman. (That is true also of trackwalkers.) Their work is generally all that of track maintenance. In argument, it is said that laborers are the lowest class of railroad employees. It seems to the Referee that the experienced pick and shovel man is of a higher class intrinsically than the yardman. However, that may be, it is impossible to find, in either rules or established custom, any justification for the creation of the desired new seniority classes. If they should be created, why confine them to the Los Angeles Division? If the new classes are justified for that division, they are in whole or in part equally so for all others.

The Referee has given particular attention to employees' Exhibit A, consisting of what are labeled as seniority lists for four districts of the Los Angeles Division. So far as "label" goes they are seniority lists and, over the signature of the division engineer, stated to be "open for correction for a period of 30 days." Whether there has been an inclusion of several supposed classes in one bulletin in violation of Rule 11, the Referee does not undertake to say.

If "laborers" are the lowest class of employees and these lists are intended as formal, official seniority rosters, it is passing strange that "laborers" are the first class on each of them.

For the Los Angeles Terminal district, two lampmen appear subordinated (if the list means anything) to the "track laborers." No track watchmen, yardmen, or gardeners appear on that list for the large and important trackage to which it refers.

On the sheet for the Ventura district, track laborers are at the top. There are no lampmen. There are track watchmen, yardmen, and a gardener in the order listed. In argument it was suggested that gardeners should properly take precedence over the others in the proposed new classes. In the Ventura district the one gardener is at the foot of the list.

On the list for the Colton district, following the names of the track laborers, appear a parkman, a lampman, and a yardman in the order indicated.

For the Indio district, there are only 5 men named altogether. None of them are listed as laborers. At the top are three yardmen, followed in order by one lampman and one parkman.

Track watchmen are named on only the list for the Ventura district.

It therefore appears from the face of employees' Exhibit A that it does not evidence an intention to create the new seniority classes now claimed. In the first place, the lists are all issued by one division engineer, whose authority to create new seniority classes may well be doubted. In the next

place, if the intention had been to create the new classes, uniformity would have been observed in their placement relative to each other. Finally, if "track laborers" had been considered the very bottom of the several proposed classes under consideration, they would have been put at the bottom instead of the top.

For sheer failure of proof the claim for the wanted new classes must fail.

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 no violation 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.