

Award No. 2336
Docket No. MW-2363

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY
COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood—

(a) That the Carrier violated the provision of Rule 36 of current agreement in laying section gangs off for short periods on the territories under the supervision of Roadmaster S. P. Jones and Roadmaster Ed. Mingus, Missouri-Kansas Division; and

(b) That all employees affected by being laid off for short periods on Roadmaster Jones' territory be paid for July 30, 1940, September 24 and 27, 1940, and that all employees affected by being laid off for short period on Roadmaster Mingus' territory be paid for September 30, 1940.

EMPLOYEES' STATEMENT OF FACTS: Roadmaster Jones issued instruction to section foremen to lay off all section men on July 30, 1940, also on September 24 and 27, 1940.

Roadmaster Mingus instructed foremen under his supervision to lay off all section men on July 30, 1940.

All of the foremen under Roadmaster Jones complied with the instructions of their superior and laid the men off for the days of July 30, September 24 and 27, 1940.

The instruction issued by Roadmaster Mingus was complied with by the foremen and the men were laid off on September 30, 1940.

POSITION OF EMPLOYES: There is an agreement in effect between the parties, bearing effective date of May 1, 1938, which agreement is, by reference, made a part of this case.

Rule 36 thereof reads as follows:

"REDUCTIONS TO DECREASE EXPENSE. 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."

Rule 3 (a) reads:

"RIGHTS OF SECTION MEN. Seniority rights of section men, as regards retention in service, will be restricted to their respective gangs, except that when force is reduced section men affected may displace section men junior in service under their respective Roadmasters."

necessary to lay off all of the remaining sectionmen except four on Monday, September 30th, in order to meet the proper reduction of expenses to keep within the allowance for that month.

In the application of Rule 36, when reduction of expenses is to be made the Carrier is required to lay off junior men in a gang or gangs when the proper reduction can be accomplished by doing so and the manner in which the proper reduction of expenses is to be accomplished rests with the Supervisory Officers of the employees involved. The Carrier holds that the intent of Rule 36 was followed by Roadmaster Mingus and that the evidence of record clearly shows there was no violation of that rule in the laying off of sectionmen on September 30th, 1940; therefore, that claim submitted to your Board by the employees in the instant case should be denied.

OPINION OF BOARD: This claim involves the construction to be given to Rule 36 of the Agreement relating to reduction of forces to decrease expense. Claimant's contentions are based on the action of the carrier in laying off 44 men on September 30, 1940, thereby leaving 4 section men only on the district payroll, exclusive of 23 section foremen. The carrier contends that the reduction was made in full compliance with the rule.

The right of the carrier to adopt budgeting plans and to reduce the number of employees to keep expenditures in conformity therewith is not questioned. It is the method employed and not the result to be attained which resulted in the present claims. To properly apply the rule to the instant case therefore, requires a consideration of the pertinent facts shown by the record.

The record discloses that the carrier appropriated sufficient funds to the roadmaster of the district for the employment of 100 section men through September 1940, in addition to the 23 section foremen. During the fore part of the month, section men greatly in excess of 100 were employed with the result that on September 19th the roadmaster was confronted with the necessity of drastically reducing his force if his budget was to be respected. On September 29th he had reduced his force to 48 section men, exclusive of section foremen. On September 30th he reduced this number to 4. The claimant contends that this constituted a layoff for a short period contrary to the provisions of Rule 36. The carrier urges that reductions of forces were made from September 19th to September 29th by laying off junior men and that the layoff of 44 men on September 30th was the only way that budget requirements could be met.

It appears that the section gangs involved were engaged in placing ballast and in inserting new ties. No reason is given for employing men greatly in excess of the 100 men contemplated during the fore part of the month. It is understandable how such action might be necessary under unusual or emergent conditions, but where such conditions are not shown, the carrier cannot be excused from making all reductions of forces in accordance with seniority rights of the employees. This Division is committed to the view that Rule 36 requires a carrier in making force reductions to use every available means to accomplish it by laying off junior men. It is only when this method is not available that the carrier may properly lay off gangs for short periods. The burden of proof necessarily rests upon the carrier to show the necessity for laying off gangs for short periods, and where, as in this case, sufficient justification cannot be shown, the finding must necessarily be that the rule was violated. This is so, not only because the carrier is attempting to establish the exception to the general intent of the rule, but also because it is the party in possession of all the facts and charged by virtue of its powers of management with making proper employee dispositions. For aught this record shows, the roadmaster could, by giving attention to his budget requirements sooner, have avoided the necessity of depriving senior men of work to which they were entitled without in any way prejudicing the interests of the carrier. This he is obliged to do under the rule. The evidence does not justify a finding that the carrier exhausted its opportunities to make necessary force reductions by laying off junior employees.

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 the carrier in laying off 44 men on September 30, 1940, violated Rule 36 of the Agreement pertaining to reductions of force to decrease expense.

AWARD

The claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 15th day of October, 1943.