

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Grady Lewis, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

**MISSOURI-KANSAS-TEXAS RAILROAD COMPANY
OF TEXAS**

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

(1) That the carrier violated agreement in effect by assigning the section crew of one section to patrol track on two or more sections on Sundays and holidays while foremen and section laborers on such other section or sections were off duty and not given an opportunity to work;

(2) That foreman and the number of laborers ordinarily used for track patrolling on Sundays and holidays assigned to sections which were patrolled on Sundays and holidays by the section crew from another section, shall each be paid for a call under the application of Article X, Rule 1, of agreement in effect, for every Sunday and holiday that the section to which they are assigned was patrolled by the section crew from another section, retroactive to January 4, 1946.

EMPLOYES' STATEMENT OF FACTS: Under date of January 4, 1946, District Engineer G. L. Moody issued the following instructions:

**"MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS
OFFICE OF DISTRICT ENGINEER—SOUTH TEXAS DISTRICT**

Circular No. 3

Smithville—January 4, 1946

286

**SUBJECT: Patrolling Track on
Sundays and Holidays**

Section Foremen:

Effective at once, when patrolling track on Sundays and holidays, one section crew will patrol two sections. Section crews will alternate on this work so that each crew will patrol every second Sunday or holiday. Roadmasters will line up section forces, but it should be clearly understood that no section crew is to patrol track off of his regular roadmaster's territory.

For patrolling track, foreman and only two laborers should be used.

G. L. Moody

The Carrier respectfully requests that the Division require as precedent to the maintenance of this action that each and every employe for whom the Petitioner is claiming, file with the Division a good and sufficient power of attorney, authorizing and empowering the Organization to represent them in this action.

OPINION OF BOARD: By Rule 2 of Section 3 foremen hold seniority rights to new positions or vacancies within a Superintendent's district. Such rights are exercised by bidding for positions as foreman of a designated section, identified by number, and the assignment bulletin assigns him to that specific section. When so assigned, his work is confined to his assigned section, except in case of emergency, when he and his gang may be used on another section where the foreman, and his gang, assigned to the section where the emergency exists, are employed and on duty.

The section laborers of the section to which a foreman is assigned comprise the gang for that foreman.

Rule 3 of Article 3 of the Agreement, reading:

"Seniority rights of laborers as such, will be restricted to their respective gangs, except that when force is reduced laborers affected may displace laborers with least seniority in their Roadmaster's district. Laborers in terminal gangs and at points where two or more gangs have headquarters may displace junior laborers on their seniority district at point where employed before exercising their seniority in outlying gangs on their seniority district. Laborers will have the right when forces are increased to return to their original section on making proper application."

restricts seniority of the laborers that make up the crews for such assigned foremen to their respective gangs, except for force reduction.

Since the work of the foreman and the gang is confined to the section, except in emergencies, and since the seniority of the laborers is confined to the gang, the terms "sections" and "gangs" become synonymous when used with respect to seniority.

When, therefore, a gang is, by Carrier direction, assigned work on a section other than that bulletined to its foreman, it is invading the seniority district of the gang of the foreman to whom was assigned the section so invaded. And the foreman not only goes outside his working district, fixed by his assignment, and by seniority rights of his gang, but he also violates the terms of the assignment of the foreman upon whose section he encroaches.

Carrier's Circular No. 3, under date of January 4, 1946, directs such breaches.

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 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 Carrier violated the Agreement as claimed.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 22nd day of July, 1947.

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

INTERPRETATION NO. 1 TO AWARD NO. 3627

DOCKET MW-3566

NAME OF ORGANIZATION: Brotherhood of Maintenance of Way Employees

NAME OF CARRIER: Missouri-Kansas-Texas Railroad Company
Missouri-Kansas-Texas Railroad Company of
Texas

Upon application of the representatives of the Employees involved in the above award, that this Division interpret the same in the light of the dispute between the parties as to its meaning and application, as provided for in Section 3, First (m), of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

The Claim for violation of Rule 3 of Article 3 of the Agreement requires an interpretation of that Rule.

The facts upon which the Claim is based are then applied to the Rule as interpreted.

Here, such facts grow out of an order issued by the District Engineer for the South Texas District. When applied to the Rule cited, they require a favorable award.

This Division has no jurisdiction to make Awards in Claims not before it. However, we interpret the Award here made to mean that like Claims, based upon similar facts, would, if presented, receive like consideration and be sustained.

Referee Grady Lewis, who sat with the Division as a member when Award No. 3627 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of May, 1948.