

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

MISSOURI PACIFIC LINES

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

- (1) That Section Laborer Edgar Thomas was improperly displaced by Section Laborer Edgar Washington on July 3, 1946;
- (2) That Section Laborer Edgar Thomas be allowed pay at the Section Laborers rate from July 3, 1946, to October 19, 1946.

EMPLOYEES' STATEMENT OF FACTS: On May 1, 1945, Section Laborers Edgar Thomas and Edgar Washington were members of Section Gang 105, Oakwood, Texas, under supervision of Section Foreman D. R. Murray, and with respective seniority dates on the San Antonio Division, Taylor Sub-Division as follows: Washington—February 2, 1940; Thomas—October 1, 1943.

Section Foreman Murray, as a result of a bid, was awarded Section 101 at Palestine, Texas, and was assigned to such position in May 1945. Section Laborer Edgar Washington left Section Gang 105 in May 1945, and commenced work on Section 101 at Palestine. No reduction in section gang forces was made on Oakwood Section 105 at the time Washington made this change. No leave of absence was granted to Section Laborer Washington from Section 105 to allow him to work elsewhere.

Washington continued to perform work as section laborer in Section Gang 101 until July 1, 1946, when the section gang forces at Palestine were reduced, resulting in Washington being cut off as section laborer in Section Gang 101. Washington was allowed, by orders of Roadmaster P. O. Elledge to return to Section 105 at Oakwood.

On July 3, 1946, Section Laborer Thomas was cut off as section laborer in Section Gang 105 while Carrier continued to allow Section Laborer Washington to work in this gang. On October 19, 1946, Thomas was returned to work by the Carrier as a section laborer in Section Gang 101. He had been unemployed for a period of 84 days.

Agreement dated August 1, 1938, is by reference made a part of this Statement of Facts.

POSITION OF EMPLOYEES: Rule 2 (g) of the agreement dated August 1, 1938, provides as follows:

- Rail Repairmen, (gas and electric welders) helpers and laborers assigned to rail repair gangs (doing maintenance of way work)
- Highway Crossing and Bridge Watchmen, and
- (c) All other employees performing work properly recognized as belonging to and coming under the jurisdiction of the Maintenance of Way Department.

NOTE: It is understood and agreed that this agreement does not annul existing agreements in effect with other organizations."

Since section laborers are, as evidenced by the above, included in the Scope Rule of the governing agreement, which specifically states that "these rules govern the hours of service and working conditions of all employees herein name * * *," and the further fact that there is nothing in Rule 6 specifically or even implying that its provisions are not applicable to section laborers, it can only properly be concluded that Rule 6, paragraphs (a) and (b) are applicable to this case or group of employees. This being so, the contention of the Employees is without basis under the applicable and governing rules of the agreement (Rules 1 and 6). Therefore, the position of the Carrier should properly be sustained.

In their handling of this controversy with the Carrier the Employees, in support of their position that Rule 6 is not applicable to section laborers, and that Washington lost his seniority rights and should not have been permitted to return to his original section, No. 105, as a result of which Thomas (the claimant) was temporarily displaced, have relied upon the provisions of Rule 2(g), quoted in Carrier's Statement of Facts. It had been the position of the Employees that since Rule 2(g) restrict the seniority right of section laborers to their respective gangs, Washington forfeited his seniority in Section Gang No. 105 at Oakwood when he was temporarily transferred by the management from that section to Section No. 101 at Palestine. With this contention the Carrier does not agree.

During the time that Washington was temporarily transferred to Section No. 101 at Palestine he did not establish or accrue any seniority with that gang; but, under the provisions of Rule 6 he retained his seniority with Section No. 105 at Oakwood, and under the provisions of this same rule, when released from Section No. 101 he returned to the section from which transferred, with his original seniority date of February 2, 1942, established with Section No. 105. Therefore, since Washington was senior to Thomas, who first established seniority with Section No. 105 in August, 1945, he did, obviously, have rights to service with Section No. 105 in preference to Thomas. Even taking Thomas' seniority date of October 1, 1943, which he is not entitled to with Section No. 105 as he did not go to work with Section No. 105 until in August, 1945, Washington is still senior to Thomas, not only in point of service with the Carrier, but with Section No. 105.

To sustain the position of the Employees would have the effect of depriving Washington of several years' seniority. To do so would be not only inconsistent with the governing rules of the agreement, but also an indefensible and gross injustice to Washington. It is the position of the Carrier, therefore, that the contention of the Employees be dismissed and the accompanying claim accordingly denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant Edgar Thomas holds seniority date as section laborer on Section No. 105 as of October 1, 1943. He was displaced by section laborer Edgar Washington who held seniority date of February 2, 1942 on Section No. 105. It is claimed that Washington lost his seniority on Section No. 105 on May 28, 1945, when he commenced work on Section No. 101. His transfer to Section No. 101 did not result from a reduction of force or a leave of absence. It is claimed, therefore, that when Washington was cut off from Section No. 101 in a reduction of force, Carrier had no right to return him to Section No. 105 and to cut off Thomas from

that gang as it did on July 3, 1945. After being unemployed for 84 days, Thomas was returned to work.

The Organization contends that Rule 2(g), current Agreement, is controlling. This rule states:

"Seniority rights of section laborers, as such, will be restricted to their respective gangs, except when force is reduced laborers affected may displace laborers junior in service on their seniority district (roadmaster territory), and such laborers may return to gangs from which displaced in order of their seniority, provided such rights are exercised within thirty (30) days from date forces are restored, of which they shall be promptly advised."

The Carrier contends that Rules 6(a) and 6(b), current Agreement, are controlling. They state:

"(a) employes or gangs temporarily transferred by direction of the management, from one seniority district to another, will retain their seniority rights on the district from which transferred."

"(b) Employes assigned to temporary service may, when released, return to the position from which taken without loss of seniority."

The section gangs involved in this dispute are all in the same seniority district. Under Rule 2(g) seniority is restricted to the gang with which the employe is working except if he is cut off by reduction of force, he may displace any junior employe in the district. After displacing a junior employe, his seniority attaches to the gang to which the junior employe belonged except that he may return to the gang from which displaced within 30 days after notice that his seniority permits his return. It is evident that section laborer Washington acquired no seniority on Section No. 101 under Section 2(g). The decision must be grounded, therefore, on the seniority he retained, if any, on Section No. 105.

That employes and gangs may be assigned to temporary service finds support in the rules. Rule 6(a) provides that employes or gangs transferred temporarily to another district shall retain seniority rights in the district from which transferred. Nothing is said in this rule about temporary service with another gang in the same district, but under Rule 2(g), the employe retains seniority with the gang from which transferred except where it results from force reduction as heretofore stated. Rule 2(b) provides, however, that an employe released from temporary service may return to the position from which taken without loss of seniority. Consequently, if Washington was on temporary service with Section No. 101, he could properly return to Section No. 105 and assert the seniority date he had with that gang.

The Organization contends that Washington was not on temporary service with Section No. 101. It is evident from the record that Washington was directed by Carrier to serve with Section No. 101. He had no seniority on Section No. 101. Evidently there was no employe available holding seniority on Section No. 101 and Washington was filling the position temporarily. The fact that he was required to remain more than a year is not a controlling point where no employe with seniority rights to the position was available. Washington could have been displaced by any employe cut off by force reduction from any gang in the district under Rule 2(g) but evidently no employe attempted to do so. When he was released from his temporary assignment, he was entitled to return to Section No. 105 without loss of seniority under Rule 6(b). His seniority rights being superior to those of Thomas on Section No. 105, he had the right to displace Thomas as he did.

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 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 the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois this 12th day of July, 1948.