

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Mortimer Stone, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

CHICAGO & ILLINOIS WESTERN RAILROAD

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

(1) The Carrier violated the effective agreement by failing to remove the names of W. H. Naas and Chester Hagen from the present seniority roster, former Section Foremen on the Chicago & Illinois Western Railroad.

(2) The Carrier make the proper adjustment in the present seniority roster for Section Foremen on the Chicago & Illinois Western Railroad, by removing the names of the parties referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: Mr. W. H. Naas and Mr. Chester Hagen were shown on the roster of the Chicago & Illinois Western Railroad, dated June 1, 1947, as Track Department Foreman with seniority ranks and dates as follows:

W. H. Naas — Rank No. 1 Foreman Date 6-16-39
Chester Hagen — Rank No. 2 Foreman Date 5-18-38

This Roster is attached as Employees' Exhibit "A".

Prior to May, 1938, Mr. Naas worked in the capacity of a track foreman with the Chicago & Illinois Western Railroad. But, in May of 1938, Mr. Naas left his position of foreman with this Carrier and accepted a position with the Illinois Central Railroad as a supervisor.

Prior to June of 1943, Mr. Chester Hagen worked in the capacity of a track foreman with the Chicago & Illinois Western Railroad. But in June of 1943, Mr. Hagen left his position of foreman with the Carrier and accepted a position with the Illinois Central Railroad as a supervisor.

The Carrier has continued to show these employes on the Chicago & Illinois Western Railroad roster as still retaining their respective seniority dates.

The employes contend that since both Mr. Naas and Mr. Hagen have left the service of the Chicago & Illinois Western Railroad that they have no longer any seniority with the Carrier.

The Carrier contends that Rule 13 of the Illinois Central Railroad agreement with this Brotherhood is controlling.

There is in effect a Memorandum of Agreement dated August 31, 1947, and effective September 1, 1937, between this Brotherhood and the Chicago & Illinois Western Railroad which we are attaching as Joint Exhibit "A".

the territorial scope of that roster. Such action has not heretofore been done or questioned when employes of the Illinois Central were promoted to supervisory positions on the Yazoo and Mississippi Valley Railroad on the Gulf and Ship Island Railroad or vice versa, and such handling would be contrary to the provisions of the agreement dated September 1, 1934, and various awards of this Board. See Awards 913, 1044, 1187, 1504, 2371 and 2639.

There is no basis for the Employees' request, and the claim should be denied without qualification.

(Exhibits not reproduced.)

OPINION OF BOARD: The Chicago and Illinois Western Railroad lies within the Chicago switching district, and has direct track connections with eleven railroads. Part of its capital stock is owned by the Illinois Central Railroad Company, whose Chicago Terminal officers supervise and direct its operation. Memorandum of Agreement, effective September 1, 1937, states that:

"During the period of Illinois Central Management it was understood that section and extra gangs, welder and helper on this line would come under the same Rules as in the Illinois Central Agreement with this Brotherhood.

Work performed by others, such as bridge gangs, etc., will be done by Illinois Central employes engaged in such work.

The Chicago & Illinois Western Railroad will constitute a seniority list so far as section and extra gangs, welder and helper are concerned.'

Rule 13 of the Illinois Central Agreement with the Brotherhood provides that:

"Employees promoted to excepted or official positions shall retain all their rights and continue to accumulate seniority in the territory from which promoted and their names shall be shown on seniority rosters in that territory."

Formerly both Naas and Hagen were track foremen on this Carrier (the Chicago and Illinois Western), but each left that position to accept a position on the Illinois Central Railroad as supervisor, which is an excepted position. Presumably on the theory that this was a promotion under Rule 13, in each case, and that they were entitled to retain all rights and continue to accumulate seniority, their names are still shown on the Carrier's seniority roster. The Committee contends that they were not promoted but accepted employment with another railroad and left the service of this Carrier so they no longer have seniority rights and their names should be stricken from the roster. The Carrier contends that Under Rule 13 and the Memorandum Agreement, the rules of the Illinois Central with the Brotherhood apply to employes of this Carrier, the Chicago and Illinois Western, that these men were promoted to positions as supervisors on other divisions of the System and their seniority rightfully accumulated in this territory from which they were promoted.

The question to be here answered is whether, by virtue of the Agreement evidenced by the Memorandum, the Rules Agreement between the Brotherhood and the Illinois Central for governing the employes on that railroad, became applicable to the employes of the Chicago and Illinois Western, or whether the two groups of employes thereby became separately governed on their respective roads by like rules; put in other words, whether the Maintenance of Way employes on the two railroads work under like rules, or the same Agreement.

The Memorandum discloses that the Agreement here involved was made,—not between the Brotherhood and the Illinois Central Railroad, and not between the local Organization on the Illinois Central and that on the Chicago and Illinois Western, but between the Brotherhood and the Chicago and Illinois Western Railroad, only. It can bind, and purports to bind, only the parties to it. Again, the Schedule of Rules of the Illinois Central Agreement were reprinted in 1945, and the cover and title page recite that they govern "On the

lines of the Illinois Central Railroad Company, The Yazoo and Mississippi Valley Railroad Company, Gulf and Ship Island Railroad Company", but no mention is made of that Agreement as governing on this Carrier. Still again, the Memorandum contemplated a termination. It was not set up as a permanent merging of the two groups. It was to last "during the period of Illinois Central Management." Finally, we note that the wording of the Memorandum does not say that the rules of the Illinois Central Agreement would apply to these Chicago and Illinois Western employees, nor that these employees would come under the rules of the Illinois Central Agreement, but only that they "would come under the same rules as in" that Agreement. From study of the Agreement and surrounding circumstances, we think the intention was to have these employees governed by like but separate rules. Accordingly, the two men here involved who had accepted employment on the Illinois Central Railroad were not entitled to retain their seniority on this Carrier.

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 Carrier violated the Agreement.

AWARD

Claims (1) and (2) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 21st day of March, 1950.