Award No. 5755

Docket No. MW-5741

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, 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, that:

(1) The Carrier violated the effective agreement when they required Section Laborers on the Northern and Eastern Districts to lose four (4) hours' time on both January 23 and 30, 1950, without regard to the seniority rights of the employes concerned,

(2) All hourly rated Sectionmen and hourly rated Bridge and Building men who were directed to lose time on January 23 and 30, 1950, be paid the difference between what they did receive for four (4) hours of work and what they should have received for eight (8) hours of work on each of the above listed dates.

EMPLOYES' STATEMENT OF FACTS: During the month of January, 1950, the Carrier issued instructions whereby all section and bridge and building crews on the Northern and Eastern districts were advised that they were to lay off for a stipulated number of hours during the last period of January.

The employes that were to be affected by this reduction in their assigned working hours understood that the Carrier's actions were necessitated by a desire to reduce operating expenses and to stay within a fixed budgetary allowance.

On January 23, and 30, 1950, a large number of hourly rated sectionmen and hourly rated bridge and building men were required to lose four hours' time and as a result, these employes were only compensated for four hours of work on each of the two respective days.

The Employes contended that the Carrier's method of reducing expenses was in violation of the seniority and assignment provisions of the Agreement and that the Carrier's action nullified the seniority of the senior employes.

Therefore, the claim was filed in behalf of all hourly rated sectionmen and hourly rated Bridge and Building men who were directed to lose time during the last period of January 1950 for the difference between what they

Thus it becomes crystal clear in view of the changes in and the elimination of agreement rules referred to on this Carrier there is no agreement provision in effect as formerly prohibiting the Carrier from laying off gangs or employes for short periods, or requiring the Carrier to retain senior men capable of doing the work when force is reduced. No force reduction occurred in these instances, as evidenced by contention of Mr. Jones in his letter of February 28, 1950 that "all of the forces being laid off," and the fact no contention or showing has been made by the Petitioner that any of the employes affected requested and were denied the privilege of displacing junior employes in the exercise of their seniority rights in reduction of force. Similar claim, rules and contentions were made and involved in Docket MW-160 and the Findings and Award No. 290 in that case support the action and handling by the Carrier and refute the claim and contention of the Petitioner in this case. The pertinent Findings in Award 290, denying the claim, read as follows:

> "In regard to foremen, the Referee is unable to find in the record of this case evidence to support the contention that Rule 16 contains a guarantee of a full month's pay. Concerning the whole issue, Rule 25 (a) provides that, 'rights accruing to employes under their seniority entitle them to consideration only for promotions to new positions or vacancies, or in the event of reduction in force, in accordance with their relative length of service with the railway, as hereinafter provided.' It would strain the language of the agreement to define the limited lay-offs complained of in this claim as reductions in force.
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> "The Referee is unable to find in the agreement, or in the circumstances surrounding its adoption, convincing evidence to support the contention that seasonal end-of-month and one-day lay-offs, as covered in the instant claim, are in violation of either Rule 16 or 25. The strongest indication that these lay-offs are not in violation of the agreement is the fact that a previous rule which would have prevented them has been eliminated."

No evidence of any character or description having been submitted by the Petitioner to the Carrier to support his contentions, on claim or agreement violation as alleged by him has been established, and no basis in fact exists for an affirmative award.

The Carrier respectfully requests that the Board deny the claim.

Except as expressly admitted herein, the Carrier denies each and every, all and singular, the allegations of the Petitioner's claim, original submission and any and all subsequent pleadings.

All data submitted in support of Carrier's position as herein set forth have been heretofore submitted to the employes or their duly authorized representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: Claim here concerns the purportedly improper action of Carrier in working employes concerned less than eight (in this case 4 hours) on January 23 and 30, 1950, with request for reimbursement for time lost on dates in question. Violation of Article 3, Rules 1 and 2, Article 7, Rules 1 and 2, and Article 10, Section 1 (a) is alleged.

"ARTICLE 3. SENIORITY

> "Rule 1. Seniority begins at time employe's pay starts in the respective branch or class of service in which employed, transferred or promoted and when regularly assigned. Employes are entitled to consideration for positions in accordance with their seniority ranking as provided in these rules.

"Rule 2. Seniority rights of employes of higher rank than laborers to new positions or vacancies, will be restricted to one Superintendent's district, except that seniority rights of employes in system gangs will extend over the entire system and be confined to their respective classifications. When force is reduced, employes shall have the right before displacing lower classified employes to displace only classified employes in the same rank or rate with the least seniority on their respective districts. Men transferring from district to system gangs will retain seniority on district from which taken and will thereafter be permitted to exercise their seniority on district gangs only in event of force reduction, affecting the individual, in the system gang; except that men so transferred from district to system gangs will have right to bid on vacancies or new positions advertised on the seniority district from which taken when such advertised positions are of a higher classification than that in which then employed on system gang."

"ARTICLE 7. HOURS OF SERVICE

"Rule 1. Except as otherwise provided in these rules, eight (8) consecutive hours, exclusive of meal period, shall constitute a day's work.

"Rule 2. For operations requiring continuous work, eight (8) consecutive hours, without meal period, may be assigned as constituting a day's work."

"ARTICLE 10. THE 40-HOUR WEEK

"Section 1. Establishment of Shorter Work Week

Note. The expressions 'positions' and 'work' used in this Article 10 refer to service, duties, or operations necessary to be performed the specified number of days per week, and not to the work week of individual employes.

"(a) **General**—

The carriers will establish, effective September 1, 1949, for all employes, subject to the exceptions contained in Article II of the Chicago Agreement of March 19, 1949, a work week of 40 hours, consisting of five days of eight hours each, with two consecutive days off in each seven; the work weeks may be staggered in accordance with the carriers' operational requirements; so far as practicable the days off shall be Saturday and Sunday. The foregoing work week rule is subject to the provisions of the Chicago Agreement of March 19, 1949."

It is asserted by the Organization that the action of the Carrier deprived senior employes of work, which was, or could have been theirs, had the number of employes been reduced in accordance with the seniority provisions of the Agreement, thus maintaining an eight-hour day.

The Carrier takes the position that this claim is not only without basis but is improperly before this Board for the reason (1) that it concerns unnamed employes on unspecified dates; (2) that it is predicated on grounds, or rules that were not made the basis of the claim, when handled on the property; (3) that there has never existed a guaranteed number of hours of work and none were contemplated (Article 10, Section 2 (d)) and finally, (4) that its action was not for the purpose of absorbing overtime within the meaning of Article 9, Rule 3.

This Division is firmly committed to the principle, as evidenced by a long list of Awards, that it will consider claims of a class, and for a period,

if they are described with sufficient certainty as to lend themselves to location as to place and to calculation as to amount.

The Carrier's assertion that the Organization is here relying upon rules that were not made the subject of the claims on the property, is without merit. In Award 5140, involving the parties hereto, the Board said:

> "Objections to the Board's jurisdiction have been noted and overruled. No objections were made by either party to handling the claim on the property, until the case reached this Board. Through all steps of the grievance procedure, the claim was entertained and a decision made on the merits. The objections now come too late."

Rule 1 and 2 of Article 3 show how seniority is obtained initially, and applied in reducing the force.

It is not alleged nor does the record indicate that the action of the Carrier was for the purpose of absorbing overtime as prohibited by Rule 3 of Article 9. Section 2 (d) of Article 10 specifically exempts the institution of a guaranteed number of hours in a day, and while Rule 1 of Article 7 states that eight hours constitutes a day's work, this rule when considered in light of other rules cannot be said to positively preclude a day of less than eight hours.

There was no reduction of force involved here. The Board is of the opinion that had there been a reduction of force, seniority should have been applied in the inverse order of hiring, that is "the last hired shall be the first laid off."

Based upon the facts of record in this particular case and the absence of any specific rule to the contrary, the Carrier's action is not violative of the existing Agreement.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 14th day of May, 1952.