Award No. 6463
Docket No. MW-6234

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward M. Sharpe, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

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

(1) That the Carrier violated the effective agreement when it would not permit Section Foreman H. E. Wilson to exercise his displacement rights on August 1, 1949 and August 2, 1949;

(2) That Section Foreman H. E. Wilson be allowed two days (16 hours) pay at his applicable straight time rate, as reimbursement for the loss of earnings which he suffered because of the violation referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: Effective August 1, 1949, the Carrier made drastic revisions of its track sections, wherein many track sections were abolished and in lieu thereof, a lesser number of mobile extra gangs were established.

Among the track sections abolished was the section in charge of Section Foreman H. E. Wilson at Alta Vista, Kansas. Mr. Wilson elected to displace junior section foreman M. R. Simmons at Section No. 601, Woodbine, Kansas, and so advised the proper Carrier officials.

At 10:10 A. M., on July 29, 1949, the Carrier's Superintendent, Mr. G. J. Mulick filed the following message for transmittal by Carrier wire to Mr. Wilson, copy to Foreman Simmons:

"JR DF
KANSAS CITY MO 357 PM JULY 29 1949

H E W
ALTA VISTA.

WILSON OLDEST BIDDER SEC 601 WOODBINE ADVISE DATE WILL DISPLACE SIMMONS

N 307-5 JOINT

G J M 1010 AM"

The second wire quoted in your letter was the wire which I filed in this office at 10:00 A. M. August 2nd, after we had our conference with Mr. Wilson. You will recall that we were unable to get him to say just what he did want to do and it seemed to me that he thought his case should be given special attention and he be permitted to bump some one on the main line. Furthermore, I do not think that it was very hard for Foreman Simons to persuade him that he could not exercise his rights on Section 601 the morning of August 1st.

I cannot agree with your Statement that Mr. Wilson lost two days time thru no fault of his own, but instead, these two days lost were thru his own fault and no one else is responsible. I therefore cannot change my decision from that rendered in my letter of November 7th, and your claim is respectfully declined.

Yours truly,

/s/ G. J. Mulick
Superintendent"

We direct the Board's attention to Part 1 of the Organization's claim reading:

"That the Carrier violated the effective agreement when it would not permit Section Foreman H. E. Wilson to exercise his displacement rights on August 1, 1949 and August 2, 1949."

The above statement in the claim is incorrect. The facts of the case prove that the Carrier did permit Mr. Wilson to exercise his displacement rights. Mr. Wilson's loss of earnings on those two days was due to (1) Mr. Simmon's failure to allow Mr. Wilson to replace him and (2) Mr. Wilson's failure to remain at Woodbine and confer immediately on the morning of August 1, 1949, by wire or telephone, with the Superintendent's office instead of returning to his home at Alta Vista and then on to Kansas City. The Carrier did not order Mr. Wilson to leave Woodbine after his arrival there August 1, 1949.

Inasmuch as there has been no violation of the Agreement, the Carrier respectfully petitions the Board to deny the claim.

OPINION OF BOARD: Due to the abolishment of the section at Alta Vista, Kansas, effective August 1, 1949, Section Foreman Wilson bid on the position of section foreman at Woodbine, Kansas, on July 29, 1949 at 12:58 P. M. The Superintendent sent a wire to Simmons, Section Foreman at Woodbine, stating that his position would not be disturbed as a result of the change taking effect August 1st.

When the Superintendent found that he made an error in wiring Wilson, he then wired both Wilson and Simmons at 1:32 P. M. "Wilson oldest bidder section 601, Woodbine. Advise date will displace Simmons."

In return Wilson sent the following wire: 'Will displace Simmons, Sec. 601, Woodbine Aug. 1, 49". Simmons refused to be displaced when Wilson reported for work on August 1st and as a result Wilson returned to his home at Alta Vista and upon arriving there wired the Superintendent at 3:35 P. M. "Section Foreman Simmons declined to be disturbed—advise disposition." On August 2, Wilson went to Kansas City to discuss the problem with the Superintendent and as a result was not at Alta Vista or Woodbine to receive the Superintendent's wire of August 2, confirming that Wilson was the successful applicant for the position at Woodbine. On August 4, Wilson assumed supervision of the Woodbine Section and makes claim for loss of earnings on August 1 and 2.

It is the position of the Carrier that it was the duty of Wilson to remain at Woodbine and confer immediately by wire or telephone with the Superintendent's office instead of returning to his home at Alta Vista and then on to Kansas City.

The record shows that Claimant is an experienced foreman, but due to confusion in telegrams went to see J. W. Cope to intercede for him instead of calling or wiring the Superintendent. In previous Awards it was held that "Employes as a general rule must perform the work as directed and in case of contract violation seek redress under the terms of the Agreement." It was plainly Claimant's duty to contact a superior officer of the Carrier in order that he be able to replace Simmons. This he failed to do. It follows that his claim must be denied.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 29th day of January, 1954.