Award No. 6709
Docket No. MW-6762

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

J. Glenn Donaldson, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

GULF, COLORADO AND SANTA FE RAILWAY COMPANY

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

(1) That the Carrier violated the Agreement when they refused to permit Section Laborer S. D. Sims to displace junior Section Laborer J. Y. Burnett on Section GB-4, Buna, Texas from September 20, 1951 to October 2, 1951, both dates inclusive;

(2) That Section Laborer S. D. Sims be allowed nine (9) days' pay at the applicable straight time rate account of the violation referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: Section Laborers Netherly and Jennings were cut off in force reduction on September 12, 1951, and were notified that they would be permitted to displace Section Laborers J. Nash and J. Y. Burnett. Within five days of the date they were cut off, Section Laborers Netherly and Jennings reported at Section GB-4, Buna, to exercise actual displacement rights, but finding conditions not to their liking, declined to displace on Section GB-4, thus leaving junior Section Laborers J. Nash and J. Y. Burnett undisturbed in so far as their being displaced as regular Section Laborers was concerned.

Subsequent thereto and specifically on September 18, 1951, Section Laborer S. D. Sims was cut off in force reduction from Section GB-5 at Kirbyville and immediately advised Roadmaster F. Smith in writing of his desire to displace junior Section Laborer J. Y. Burnett at Section GB-4 at Buna, effective September 20, 1951.

Mr. Sims' request was denied and claim for all monetary loss suffered was then filed with Superintendent J. W. Murphy by letter of November 1, 1951 from the Claimant, claiming twenty-five working days' time as of that date.

However, it was subsequently developed that junior Section Laborer J. Y. Burnett was subsequently displaced on October 2, 1951 by a senior Section Laborer cut off in force reduction on Section GB-5, and the claim was subsequently revised to include only the time lost between September 20, 1951 and October 2, 1951, both dates inclusive.

There is no resemblance between the question involved in the dispute covered by Award 2994 and the question involved in the instant dispute.

A careful analysis of the Employes' position in this dispute will show that it actually contemplates elimination of the word "regular" from Section 7, Article II, of the Laborers' Agreement, effective September 1, 1947, quoted at the beginning of the Carrier's Statement of Facts. In other words, if the Employe's position in the instant dispute were to prevail, it would have the effect of revising Section 7, Article II, to permit the involved employe to displace **any junior section laborer on the seniority district,** as contemplated by the Employes' claim, when that rule, as written, actually provides that such employe may only displace "any **regular** junior section laborer on the seniority district." (Emphasis added). The Board has consistently recognized and adhered to the well established principle that it is only authorized to interpret Agreement rules **as written** and is without authority in law to add to, take from or otherwise amend and revise Agreement rules by interpretation. See Third Division Awards 1230, 2612, 3407, 4763, 5079 and many others.

CONCLUSION

In conclusion, the Carrier respectfully reasserts that the claim of the Employes in the instant dispute is entirely without support under the Agreement rules and should be denied for the reasons that:

FIRST. The Employes' claim for penalties was not initially submitted in the manner prescribed by the last sentence of Article III, Section 5 of the Laborer's Agreement and must also be denied on the basis of the clear and unambiguous terms of the last sentence of Article III, Section 10 of the Laborer's Agreement.

SECOND. The evidence is crystal clear that Section Laborer J. Y. Burnett's status, at the time Claimant S. D. Sims desired to displace him, was that of a **temporary** employe, and Claimant Sims' displacement rights were restricted to displacing a junior **regular** section laborer on the seniority district.

The Carier is uninformed with regard to the arguments the employes will advance in their ex parte submission and accordingly reserves the right to submit such additional facts, evidence and argument as it may conclude are necessary in reply to the Employes' ex parte submission and any subsequent oral arguments and briefs they may present in this dispute.

All that is contained herein is either known or available to the Employes and their representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant, section laborer, was cut off in force reduction effective September 18, 1951. On September 20 he requested permission to displace B., a junior employe on the adjoining section at Buna. The Roadmaster denied the request. Claim was originally filed on Nov. 1, 1951 for 25 days but because of facts developed subsequently, claim was reduced to nine days.

N. and J., section laborers senior to claimant, had previously been cut off another section in the district and had indicated their choice of displacement by signifying their intentions to exercise their seniority on the Buna section which would have displaced B. and one other section laborer regularly assigned to work at Buna. This right to displace became effective September 12, 1951. N. & J. never exercised this right.

The Employes assert but do not present evidence in support thereof, that these men visited the section on or about September 15, 1951, and finding conditions not to their liking, declined to displace, thus leaving B.

and the other junior employe undisturbed. The Carrier contends that it was never advised of N. and J.'s decision not to displace at Buna. The burden of proving this fact, if the period allowed for displacement is to be shortened, was on the claimant and because not carried, we must confine our consideration of the situation as we find it on September 27, 1951. The Carrier on the later date, cancelled N. and J.'s seniority rights for failure to make displacement within fifteen days. Whether such period of time is of sufficient length under such circumstances, there being no express rule provision, is decided affirmatively only for the purposes of this case. In a proper case where the question is argued, the Board might even determine that it is unreasonably long. We have no way of determining where the docket is silent on the question, as here. Thus restricted, the issues presented are as follows:

(1) Is it correct, as Carrier contends, that the claims as presented to the Board are not the same claims initially presented and considered upon the property and thus barred from our consideration?

(2) Were the monetary claims timely submitted under Article III, Sec. 10?

(3) Was Art. II, Sec. 7, violated by Carrier in denying claimant right to displace junior employe B. September 27-October 2, 1951?

We comment upon issues (1) and (2) together.

Claimant personally advanced his claim on Nov. 1, 1951, in a letter to the Superintendent of the Santa Fe RR at Galveston, alleging violation of his seniority rights and setting forth the express rule allegedly violated. He claimed 25 days relating that he had previously asserted his claim orally twice and twice in writing to apparently subordinate officers. The Superintendent's denial of the claim appears of record. The claimant was not told therein that in Carrier's opinion he should have written the Superintendent of the Gulf, Colorado & Santa Fe RR instead of the Supt. of Santa Fe. The Organization on December 18 wrote the General Manager of the Gulf, Colorado and Santa Fe RR at Galveston. The General Chairman was advised to take the claim up with the Superintendent under Art. III, Rule 5. Eventually procedural lines were straightened out and because of facts developed along the way, the claim was reduced from 25 to nine days. The Carrier then on April 4, 1952 defends under Article III, Section 10, requiring monetary claims to be filed within sixty days.

No useful purpose would be served by further recital of the details of claim handling. Suffice to say substantial compliance was had with the applicable sections of the rules which, we note in passing, are not free from ambiguity. The first eight sections of Article III deal solely with disciplinary hearings and appeals. Therein, in Rule 5, it is incidentally stated that initial handling on the division shall be with the Superintendent. In Section 9 it is provided that the same line of procedure shall be followed in appealing other grievances. Section 10 provides, merely, that time claims must be presented to the **Railroad Company** to be entitled to consideration, and any payment claimed will, if allowed, be restricted to a period commencing not earlier than sixty days prior to date so presented. Claimant's letter of November 1, 1951, we find, was sufficient notice to call this time claim to the attention of the Railroad Company, within the time period specified by Art. III, Rule 10, in order to preserve claim for the days in question. To reduce a claim is not to fatally alter it where no prejudice can be shown to the other party in so doing. In fact, the Organization should be commended rather than criticized for adjusting its claim downwards to fit subsequently developed facts concerning which it and the claimant were earlier unaware of. We find nothing in the record to indicate a change in the substantial character of the claim asserted by this claimant from September 20, 1951 forward. What we said in Award 6016 regarded super-technicalities is pertinent hereto.

Concerning the third issue, it should be clear that the rights of the two employes, N. and J., whatever such rights may have been earlier, came to an end through Carrier's action in terminating their seniority rights on September 27, 1951. Any argument that the junior employe B.'s status was temporary because of the N. and J. displacement elections, was likewise invalidated. Claimant's rights were superior to all others and he was entitled to the work of the position on September 28, 1951 even though the position was scheduled for abolishment on October 2, 1951.

It should be noticed that unfortunately we have not disposed of the principal question submitted to us for decision, namely the status of the junior employes after N. and J. had signified their intentions to displace but had yet to act. In absence of proof of their refusal to assume such positions prior to forfeiture of seniority for failure to displace, any expression of opinion on our part would be academic and impotent.

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 violated to the extent indicated in the Opinion.

AWARD

Claim sustained to the extent indicated in the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 9th day of July, 1954.