

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Dudley E. Whiting—Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**THE PITTSBURGH AND WEST VIRGINIA RAILWAY
COMPANY**

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

(1) The Carrier violated the Agreement when it failed to recall Trackman L. Whitaker to fill a trackman's position which was reestablished on Section No. 10 as of June 2, 1952, and in lieu thereof, assigned to position a junior trackman;

(2) Trackman L. Whitaker be reimbursed the exact amount he lost as a result of the Carrier's action in violation of the Agreement as referred to in part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: On May 1, 1952, Trackman L. Whitaker, who was regularly assigned as such on Extra Gang No. 2, was furloughed in force reduction.

Shortly thereafter, Mr. Whitaker inquired and was informed by the Carrier's Track Supervisor that his accumulated seniority entitled him to exercise displacement rights on Sections Nos. 3, 6, 19, 23, or 26.

Inasmuch as the headquarters of the above referred to sections were a considerable distance from Mr. Whitaker's residence at Rook, Pennsylvania, Trackman Whitaker elected not to exercise displacement rights thereon, but did advise the Carrier's Track Supervisor of his availability for assignment as trackman if and when such a position or vacancy developed in the vicinity of Rook, Pennsylvania.

On May 12, 1952, Trackman Whitaker requested and was granted permission by the Carrier's Track Supervisor to exercise displacement rights on Section 12 at Bridgeville, Pennsylvania. Two days later, he was displaced therefrom by a senior trackman.

On June 2, 1952, the Carrier recalled furloughed trackman James Marchese, who is junior to Trackman Whitaker, to active service to fill a reestablished trackman position on Section 10 at Rook, Pennsylvania.

The Claim was filed in behalf of Trackman L. Whitaker requesting that he be reimbursed the exact amount lost because of the violation of his seniority rights.

OPINION OF BOARD: Article II, Section 5, restricts seniority rights of trackmen to their respective gangs except that they may displace junior trackmen in other gangs when force is reduced. Clearly then the claimant had not contract right to be recalled to service for a position on another gang. When request was made on his behalf to displace a junior trackman such request was granted. Hence there is no merit to the claim.

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 Employee involved in this dispute are respectively Carrier and Employee 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

The Agreement was not violated.

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 June, 1955.