

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Harold M. Weston, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

McCLOUD RIVER RAILROAD COMPANY

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

(1) The Carrier violated the effective agreement when it failed to call and use employees regularly assigned to and holding seniority on Section No. 3 to perform 5 hours overtime service on their assigned territory on December 9 and 13, 1954, and used employees assigned to and holding seniority on Section No. 4 instead;

(2) Section Foreman E. Knutson and Section Laborers D. Martinez, C. Cullers, A. Duart, R. Saldana, D. Delgada and J. Decker, who are assigned to and hold seniority on Section No. 3, each be allowed five hours' pay at their respective time and one-half rates account of the violation referred to in part (1) of the claim.

EMPLOYEES' STATEMENT OF FACTS: As is generally customary on most railroads, the Carrier's property is divided into sections which are numbered. One gang is assigned to each of such numbered sections, each gang consisting of a foreman, occasionally an assistant foreman and a varying number of trackmen, who are assigned to and responsible for the general maintenance of their individual sections.

Positions of Foreman on each of such sections are obtained by bidding for and being awarded individual positions as such which have been bulletined in accordance with Rule 19. After being awarded and assigned to a position of Section Foreman on any one particular section, the incumbent thereof can not transfer to another foreman's position until and unless he has been displaced therefrom by a senior foreman or until and unless he bids for and is awarded a foreman's position at some other section location which had been advertised by bulletin.

In a like sense, seniority rights of section laborers are restricted and confined to the individual gang on which employed except and until forces are reduced, position is abolished, or the employe is displaced, except that when forces are increased or vacancies occur, section laborers who have made dis-

Nothing in our present contract specifically changes this practice nor up to the time of these claims have there been any questions of the application of the practice. Seniority of employes applies over the entire operating property of this railroad.

8. Nothing in the contract nor in practice sets up specific seniority districts on this property. If seniority and work assignments are to be restricted, such should have been done through negotiation and the contract written or amended accordingly.

McCloud River Railroad Company requests an oral hearing in this case because it is difficult to explain in a written submission the history of our relationship with our employes in this regard and the conditions under which this railroad operates.

OPINION OF BOARD: The Carrier is a short line railroad operating in California between Shasta and Hambone. The claimants are the foreman and crew of Section Gang 3 whose headquarters are at McCloud, California, and work assignment extends from 8:00 A.M. to 4:30 P.M. Tuesday to Saturday with Sunday and Monday as rest days. The Carrier has at least two other gangs headquartered at McCloud, Section Gangs 2 and 4, and this dispute centers on the assignment by the Carrier of Gang 4 to perform certain work on December 9 and 13, 1954, on a section of track considered by claimants to be their exclusive work territory. On the first occasion, Thursday, December 9, 1954, the crew of Section 4 was used from 7:00 A.M., their regular starting time, to 8:00 A.M., the claimants' regular starting time, to clean switches, while on Monday, December 13, 1954, which was claimants' rest day, Section 4 was used for four hours for the same purpose.

The Carrier emphasizes its small size and economic problems but we of course are not permitted to consider the equities of the situation and must instead direct our attention to the applicable agreement between the Carrier and Organization and to the record developed on the property.

The critical issue before us is whether or not the work performed by Section Gang 4 at the times in question was in an area of track regularly assigned to Section Gang 3 and not to Section Gang 4. If this question is resolved in the negative, the numerous authorities cited by the Carrier (Awards 4355, 5250, 7137, 7446 and others) are certainly applicable and the claims are without foundation. Should, however, the contrary be found true, the claims will have hurdled an important obstacle. It is not material to our determination of the issues before us that Gang 4 may have been combined with Gang 3 from time to time to handle some special problem.

The Carrier contends that its section gangs do not have any particular territory assigned to them and that neither the Agreement nor the record supports the petitioner's position. We cannot agree with this contention. Viewed realistically, the seniority provisions of the agreement adequately establish that the contracting parties intend that each of the regular section gangs will work in a certain location. Thus, Rule 8 stipulates that "Seniority of section and extra gang laborers shall be restricted to one gang except when transferred under Rule 6 or 7," while Rule 7 expressly provides that—

"Laborers with six months or more seniority may apply to the roadmaster for a transfer to a more desirable location and shall be transferred at the first opportunity when the force is increased or a vacancy occurs at the desired location, and shall retain all accumulated seniority."

In the light of the small total mileage of this Carrier, there would be little purpose to these provisions, particularly Rule 7 and its "location" language, if each of the section gangs were not assigned to a specific "location." In addition, Rule 19 shows that new positions and vacancies of foremen are bulletined with notices that set forth not only the titles of the positions concerned, their hours and rates of pay but their "locations" as well. In our opinion, it is manifest from a consideration of Rule 8, in the light of Rules 7 and 19 as well as 4 and 17, that each section gang is assigned to work its own separate section of track. This conclusion is buttressed by the Carrier's own written statement made on the property and set forth in the record (page 28) that "The work of Gang No. 3 in the McCloud Yard on its rest days was assigned to Gangs Nos. 2 and 4." While the statement just quoted was addressed to another point, it is not out of context and is revealing with respect to the point at issue. In view of the foregoing, we are satisfied and find that on the two days heretofore mentioned Section Gang 4 was called upon to clean switches on the section regularly assigned to the claimants.

The question that remains is whether or not any provision of the Agreement prevented Carrier's assignment of Section Gang 4 to clean the switches at times outside claimants' regular hours of work. With respect to that portion of the claim relating to Thursday, December 9, it is obvious that that was not the claimants' rest day but a day on which they normally worked. They definitely should have been called in to perform the work in question in view of our finding hereinabove made and Rule 25 which provides that

" * * * employees will be allowed time and one half on minute basis for services performed continuous with and/or in advance of regular work period. * * *"

As to that part of the claim that relates to Monday, December 13, which was a rest day for the claimants, Paragraph (i) of Section 3 of Article II of the Forty Hour Week Agreement, which is incorporated into the Agreement by Rule 35, is pertinent. That paragraph reads as follows:

"(i) Work on Unassigned Days—

Where work is required by the carrier to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employe who will otherwise not have 40 hours of work that week; in all other cases by the regular employe."

Under the clear mandate of this provision, the Carrier could either have assigned the clearing of the switches to "extra or unassigned" employes "who will otherwise not have 40 hours of work that week" or to the employes regularly handling that work. The foreman and crew of Section 4 are obviously not "extra or unassigned" employes within the meaning of Paragraph (i). Since the work was required to be performed in the section to which Section Gang 3 was regularly assigned, there is no alternative to the conclusion that Section Gang 3 and not Section Gang 4 were the regular employes to whom the cleaning of switches that four hour period of December 13, 1954, should have been assigned. See Awards 5261, 5271, 6019 and 6872.

The claim must therefore be sustained. This case is to be distinguished from those situations where a section gang is rushed into the territory assigned to a different gang off duty at the time, to handle a short emergency or where for some other valid reason it would be impracticable to recall the claimants. Here there is no evidence in the record developed on the property that any such emergency or exceptional situation existed. See Award 8524.

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 there was a violation of the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 4th day of February, 1959.