Award No. 9256

Docket No. MW-8663

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Harold M. Weston, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

CHICAGO AND WESTERN INDIANA RAILROAD COMPANY

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

(1) The Carrier violated the effective Agreement between March 15, 1954 and April 9, 1954, when it assigned track forces to remove wooden platforms at 51st Street Coach Yard, Chicago, Illinois.

(2) The Carrier further violated Article V of the August 21st, 1954 Agreement, when it failed to ender a valid and recognizable decision of dis-allowance as required by the provisions of the aforesaid Article V.

(3) Carpenter Foreman Harry Lessner and Carpenters J. Banchak, A. Posch, F. Wann and F. Gaydich, each be allowed pay at their respective straight time rates for an equal proportionate share of the total man-hours consumed by the track forces in performing the work referred to in part one (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: Beginning on March 15, 1954, and continuing through April 9, 1954, the Carrier assigned track forces to perform the work of removing wooden platforms at 51st Street, due to alterations of the 51st Street Coach Yard, Chicago, Illinois.

Claimants are regularly assigned employes of the Carrier's Bridge and Building Department and are carried on an appropriate seniority roster.

In the handling of this dispute on the property, in accordance with the Agreement procedure, the Carrier's Engineer, Maintenance of Way, addressed the following letter to the General Chairman of the Brotherhood of Maintenance of Way Employes under date of February 24, 1955:

"CHICAGO AND WESTERN INDIANA RAILROAD COMPANY

Dearborn Station — 47 W. Polk St.

Chicago 5, Illinois

For the above and foregoing reasons, the Carrier respectfully requests your Board to deny the Employes' claim in its entirety.

All necessary data in support of the Carrier's position has been presented to the Employes and is made a part of the particular question in dispute.

(Exhibits not reproduced)

OPINION OF BOARD: The Claimants, carpenters in the Carrier's Bridge and Building Department, contend that it was in contravention of the controlling Agreement to use Track Department laborers to remove old wooden platforms at the 51st Street facilities in Chicago, Illinois.

It is the Carrier's position that the work involved was Bridge and Building Department common labor and that since no laborers were employed in that Department, it became necessary to use section laborers of the Track Department. While the platforms had been constructed by the Carpenters, Carrier emphasizes the point and supporting evidence that such construction required considerable carpentry skill but that the removal work called for pure labor and the utilization of no carpentry tools, training or personnel. It also is noted that the wage rates prescribed by the Agreement for laborers in both departments are the same.

The Carrier's position is an appealing one from the operational and economic standpoints for it would seem unsatisfactory in those respects to hire laborers for the Bridge and Building Department solely to perform the removal work, or to use higher rated carpenters to accomplish the unskilled labor involved in the process. Nevertheless, the equities of the matter are not for us to consider and, in our opinion, the applicable Agreement is not sufficiently flexible to permit the use of Track Department laborers to perform Bridge and Building Department work, no matter how unskilled that work may be.

The Scope provision of the Agreement indicates the existence of two separate departments—the Track Department and the Bridge and Building Departments. This in and of itself is not controlling as such awards as 7076 and 7600 make clear. However, when considered together with the seniority rules, it is apparent that the two departments are separate and distinct and that, as Rule 14 demonstrates, the seniority rights of the employes are "confined to the sub-departments in which employed," these sub-departments being defined specifically as the "Track Department" and "Bridge and Building Department."

It is undisputed that the work involved was Bridge and Building Department work and it is quite apparent, in view of the Scope provision and Rule 14, that that Department had prior claim to the removal work in question and should have been used therefor. Motivating considerations and comparative skills notwithstanding, these prior rights were violated by the use of employes outside the seniority district to which the work belonged. This conclusion is not affected by Rule 43, which is not inconsistent with that result by any reasonable interpretation, does not concern seniority rights between departments and in any event would give way to specific rules on the subject such as Rule 14. Cf. Award 8089 and 7793, which, unlike this case, concern composite service claims.

Awards 6879 and 8757 are not pertinent. Neither considers the departmental question presented in the present case and it is that point rather than

the matter of camparative skills that is critical here. Moreover, Award 8757 turns on facts that are absent in the situation before us—that the remodeling involved in that case was so extensive and of such great magnitude that it warranted the use of an outside contractor rather than the carrier's regular working complement.

The claim is not barred by any procedural defect. The only contention along that line is that in processing the claim on the property, Petitioner breached a requirement of the Chicago Agreement of August 21, 1954, by failing to notify a Carrier representative "of the rejection of his decision." An examination of the record discloses that there was no such notification requirement in existence at the time in question, namely, December 21, 1954, although it did become effective after that date.

It is accordingly our view that Carrier's use of Track Department employes to perform work that properly belonged to the Bridge and Building Department constitutes a flagrant violation of the Agreement. Under the circumstances, Claim (3) does not seem unreasonable and it, as well as Claim (1), will be sustained.

In view of our finding, it is unnecessary to consider Claimant's further contention that Carrier failed to comply with the procedural requirements of the aforementioned Chicago Agreement of August 21, 1954.

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 maning 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.

AWARD

Claim (1) and Claim (3) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of February, 1960.

DISSENT TO AWARD NO. 9256, DOCKET NO. MW-8663

The fallacy of the conclusions expressed in Award No. 9256 rests on the fact that there were no Bridge and Building laborers holding seniority in the sub-department other than the employes therein who were at the time assigned in higher occupational classifications. No rule or agreement required Carrier to assign claimants to fill the Bridge and Building laborer positions.

Rule 14 is one of the Seniority Rules extending from Rule 12 to Rule 35, inclusive, in the Agreement. Rule 30 excepts "laborers" positions from the bulletining provisions of the rule. In addition, these were "temporary" laborer positions according to Rule 31, which "* * * may be filled without bulletining, except that senior employes will be given preference, subject to provisions of Rule 28." None of the claimants expressed preference, nor did they in any way act to place themselves in the exercise of seniority rights on the laborer positions when established or during their existence.

This Award displays a lack of understanding of the seniority rules. It perpetrates an unwarranted expense upon Carrier and awards an unjustified allowance of money to claimants who currently received full compensation for work in their highest occupational grades.

For these reasons, among others, we dissent.

/s/ J. F. Mullen
/s/ J. E. Kemp
/s/ R. A. Carroll
/s/ W. H. Castle
/s/ C. P. Dugan