

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Roscoe G. Hornbeck, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY**

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

(1) The Carrier violated the effective Agreement when it assigned Section Laborer L. B. Linn who was regularly assigned to the Rule Section to perform work on the territory comprising the Fortescue Section and failed to call and use Section Laborer W. E. Chaney who holds seniority on the Fortescue Section;

(2) Section Laborer W. E. Chaney be allowed the exact amount lost because of the violation referred to in part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: Prior to August 2, 1954, the claimant, Mr. W. E. Chaney, who was regularly assigned as a section laborer on the Fortescue section under the supervision of Section Foreman S. D. Ham, was laid off account of force reduction.

Section Laborer L. B. Linn was regularly assigned as such on the Rule section, under the supervision of Section Foreman G. L. Bentley.

During the period August 2 to 6, 1954, both dates inclusive, Foreman Bentley at Rulo was accorded a paid vacation. Whereupon the Carrier assigned Section Laborer Linn as well as the one remaining section laborer on the Rule section to work under the supervision of Foreman Ham on the territory comprising the Fortescue section while Foreman Bentley was on vacation.

The claimant Section Laborer was available to perform work on his section (Fortescue) but was not called or notified to do so, consequently a claim was filed in behalf of the claimant which was declined as well as all subsequent appeals.

The Agreement in effect between the two parties to this dispute dated September 1, 1949, together with supplements, amendments, and interpretations thereto are by reference made a part of this Statement of Facts.

The only right a laid off employe has is that defined in the rules quoted above; namely, to be recalled in seniority order **when forces are increased**. In this case, when forces were increased, senior employes were recalled to service in the order of their seniority. The seniority roster shows (Carrier's Exhibit No. 1) that claimant was the next man out, and would have been recalled had forces been increased by one more position. However, the forces were not increased in sufficient number of positions to reach claimant, consequently he was not recalled and the service in dispute was performed by employes senior to him in conformity with the provisions of Rules 5(b) and 24(b).

In conclusion, it should be remembered that:

1. Section laborers on this property do not have section gang seniority, but on the contrary, their seniority extends over a road-master's territory for all purposes, as provided for by Rules 5(b) and 24(b).
2. Not having gang seniority, it cannot be said that claimant had any right to the work in dispute, which was performed by employes senior to him on his seniority roster.
3. Claimant's right as a laid off employe are confined to recall to service in seniority order, by Rules 10 and 11, to instances **when forces are increased**. Forces were not increased sufficiently to reach claimant's standing on the seniority roster.
4. The Board must confine its decision to the rules in effect on this property, and must cast aside any awards cited by Petitioner which involve rules different than Rules 5(b) and 24(b).

In the light of all the facts and circumstance, there would seem to be no alternative other than to deny the claim in its entirety.

The Carrier affirmatively asserts that all data herein and herewith submitted has previously been submitted to the employes.

OPINION OF BOARD: Claimant W. E. Chaney, a Section Laborer, classified in Track Sub-department, Group 1, Grade C, the Wymore Division was assigned to the Fortescue Section of the Division prior to November 6, 1953, when he was laid off on account of force reduction. Section Laborer L. B. Linn was, prior to the time involved in the Claim, assigned to the Rulo Section. Chaney's Foreman was S. D. Ham. Linn's Foreman was G. L. Bentley. From August 2 to 6, inclusive, Foreman Bentley was on vacation with pay. During this period Linn and another Section Laborer, who had been assigned to the Rulo Section, were put to work on the Fortescue Section and it is charged worked on that section. It appears that Claimant was available for work during the period involved but was not called.

The basis for the Claim is well stated in the brief of the Labor Member of the Board;

"Claimant was entitled to be recalled to service when the force on his section was increased" and "the assignment of the two laborers from the adjoining section constituted an increase of force as contemplated under the Agreement."

Carrier asserts that the Claim should be denied, because

- (1) The record contains no proof that any work was done on the Fortescue Section during the period set up in the Claim.
- (2) Consolidation of the two sections does not constitute an increase in force.
- (3) Section Laborers have seniority in Roadmaster's Territory.
- (4) Awards cited and relied upon by the Organization do not support the Claim.
- (5) Carrier's proposed settlement in 1951 of another dispute does not support the Claim because of factual differences.

The record is silent whether or not any work was done by Laborer Linn on the Fortescue Section during the period involved. This failure of proof removes any means of fixing compensation, if the Claim is allowed.

Carrier asserts that the action taken was consolidation of the two Sections Fortescue and Rulo. This is not denied. Whether the term "consolidation" is used loosely or technically does not appear. The record is devoid of any further information on the matter. If it were developed we might have a different question to decide. In any event it appears that the two Sections during the period involved in the Claim were treated as one.

Consolidation of Sections is recognized in the Agreement:

"When two sections or parts of two sections are consolidated, the senior foreman and laborers on the sections affected will be retained on the new section thus formed. * * *."

This Rule implies that the sections after consolidation shall be a single unit and specially provides that the laborers in the sections before consolidation shall be retained in the new section.

The question of Seniority is also covered by Rule 5(b),

"Employees in Grade C of Group 1 of the Track Sub-department shall have seniority on the Roadmaster's territory on which employed. * * *"

And Rule 7(a) provides:

"Seniority rosters of employees will be compiled separately for each grade of each group under each Sub-department by seniority districts . . ."

If seniority is to be restricted to the Fortescue Section, Claimant was the Senior Section Laborer. Admittedly Claimant was junior to Laborer Linn on the seniority Roster on the Roadmaster's Territory. Rule 5(b) definitely fixes the Seniority District for Claimant and for Section Laborer Linn.

So that, whether or not there was a consolidation of Sections, Laborer Linn was senior to Claimant. If there was a consolidation the laborers from the two districts were retained in the new under Rule 15. In either event there were no extra laborers employed in the Seniority District after Laborer Linn and his associate laborers were assigned to the Fortescue Section.

The Organization cites many Awards which support the contention here made. With one exception those Awards do not affect the parties to this Submission. None of them gives attention to the specific rules here involved by the Carrier.

Award 2689, Carter, Referee, decided in 1944, prior to the effective Agreement was between the parties in the instant case. The Board found that a gang of extra laborers, who did not have the classification of Claimants, were doing the work which regularly belonged to Claimants. The facts were very different than found here.

The Award in this Submission is based on the premise that seniority rights of Claimant and Laborer Linn were not restricted to the separate districts of Fortescue and Rulo and also that they had been consolidated into one district at the time involved in this Claim.

The Organization also refers to a letter from an officer of the Carrier, written years after the effective dates of the controlling Agreement. Carrier asserts that the facts in the case there under consideration were different. This is true, but it can not be denied that several statements in the letter indicate that the writer construed the rules as now contended by the Organization on this Claim. This expression of opinion by the Carrier carries weight. However, we are required to interpret the Rules as written and so doing, find them plain and unambiguous and in accord with our Award.

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:

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

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of March, 1960.