Award No. 9339
Docket No. MW-8520

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Carl R. Schedler, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

NORTHWESTERN PACIFIC RAILROAD COMPANY

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

(1) The Carrier violated the effective Agreement on Monday, March 7, 1955, when it assigned two (2) section laborers from Section No. 14, Dos Rios, California to work on Section No. 13, Longvale, California, and failed to call the senior employes of Section No. 13, who were available for this work;

(2) Joe E. Martin and Harold L. Stewart, regularly assigned laborers of Section No. 13, be paid eight (8) hours at their respective time and one-half rate, account of the violation referred to in part *one (1) of this claim.*

EMPLOYES' STATEMENT OF FACTS: Employes working on Section No. 13, Longvale, California, are assigned a work week of Tuesday through Saturday excluding holidays, with rest days of Sunday and Monday.

On Monday, March 7, 1955, a rest day of the employes assigned to Section No. 13, the Carrier instructed the operator of Shovel SP 0-43 to perform certain work within the limits of Section No. 13 and, in view of the employes regularly assigned to Secton No. 13 not being scheduled to work on Monday, March 7, 1955, the Carrier assigned Section Laborers William Robertson and Ralph Cooper from Dos Rios Section No. 14, to perform laborer's work, at *section laborers rate of pay, on* Section No. 13.

Claim as set forth herein was filed in behalf of Section Laborers Joe E. Martin and Harold L. Stewart of Section No. 13; the Carrier declining the claim throughout all stages of handling.

The Agreement in effect between the two parties to this dispute dated January 15, 1939, together with supplements, amendments, and interpretations thereto are by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: The instant dispute stems from the Carrier's action in assigning two (2) employes of Section No. 14, Dos Rios, California

All data herein submitted have been presented to the duly authorized representative of the employes and are made a part of the particular question in dispute.

The carrier reserves the right if and when it is furnished with the submission which may have been or will be filed by the petitioner in this case, to make such further answer as may be necessary in relation to all allegations and claims as may be advanced by the petitioner in such submission which cannot be forecast by the carrier at this time and have not been answered in this the carrier's initial submission.

OPINION OF BOARD: This case involves two primary conflicts. The Organization argues that each section is a separate seniority district while the Carrier states that such an argument is completely without merit. The Carrier contends that Flagmen are a distinct and separate classification from Section Laborers and that their work is different while the Organization asserts that the work of flagman is incidental to the task to be performed and may be done by many classifications.

With respect to the first conflict involving seniority districts we are unable to find anything in the Agreement specifically providing that sections are seniority districts. However, there are several Awards by this Board construing the "Work on Unassigned Days" rule under the Forty Hour Week Agreement as requiring the assignment of work to the section crew regularly performing the work within the section where the work occurred. See Award No. 8708. A study of Award 8708 and other awards on the same issue indicates that the Board was not confronted with the question of which classifications regularly perform the work but was concerned with which of two crews was entitled to the work. In the instant case the Carrier contends that Flagmen are a separate job classification and that they are exempt from the seniority, promotion and bulletining rules by the terms of the Agreement. It is our opinion that there is merit in the Carrier's contention.

Rule 48 in the amended Agreement, effective September 1, 1949 lists Flagmen as a separate classification at an hourly rate lower than laborers. Consequently, we are led to the conclusion that on the Carrier's property Flagmen are a separate classification from Section Laborers, at a lower rate of pay, and as such the work they perform when employed is separate and distinct from Section Laborer's work. The Section Crew for Section No. 13 in this case did not include Flagmen so there is no foundation for the claim that two laborers from Section 13 should have been assigned to perform the work of Flagmen who were regularly assigned to this work.

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 Employe involved in this dispute are respectively Carrier and Employe 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 7th day of April 1960.