

Award No. 10813
Docket No. MW-10279

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Preston J. Moore, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

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, on January 15, 1957, it permitted Section Laborer E. E. Rector to transfer to Section No. Y-21 and to thereby displace Section Laborer P. R. Sanchez.

(2) Section Laborer P. R. Sanchez be allowed pay for all time lost from January 15, 1957 until he was returned to work on Section Y-21.

EMPLOYEES' STATEMENT OF FACTS: Late in December, 1956, Section Laborer B. J. Negrete requested and was granted a leave of absence from his regularly assigned position as Section Laborer on Section Y-21 at Alliance, Nebraska.

At that time, the Claimant employe, Mr. P. R. Sanchez, was the senior laid-off employe from Section Y-21 and Section Laborer E. E. Rector was the senior section laborer regularly assigned to and working on the section at Mullens, Nebraska.

Mr. Sanchez was recalled from furlough to fill the vacancy thus created by the absence of Section Laborer Rector. Within a few weeks, Mr. Negrete resigned from the Carrier's service and, in lieu of continuing to permit Section Laborer Sanchez to fill the vacancy in Section No. Y-21, the Carrier permitted Section Laborer Rector to displace Claimant Sanchez from Section Y-21 on January 15, 1957.

The instant claim was filed and thereafter handled in the usual and customary manner on the property.

Again in Award 2622, Referee Parker makes the following statement:

“An elementary rule applicable to the construction of all contracts and agreements is that the rights of the parties thereto are to be determined by the language to be found in the instruments themselves. Otherwise stated, contractual rights are to be determined from the four corners of the agreement executed by the parties.”

Here the Third Division has gone on record as subscribing to the principle that the rights of the parties are to be determined from the language to be found within the four corners of the agreement, and not language that might be found in some other parties' agreement. The only language to be found within the four corners of the agreement having application in this dispute is that found in Rules 5(b) and 24(b) which clearly stipulates that section laborers do not have section gang seniority, but on the contrary, they have roadmaster's seniority which gives the senior employes the right to work on any section on the roadmaster's territory. The provisions of Rules 5(b) and 24(b) cannot be found in any award that might be cited by Petitioner in support of the instant claim, consequently, such awards cannot be considered criterions on which to rely in this case.

As stated previously, the permanent vacancy at Alliance on January 15, 1957, resulting from the resignation of Section Laborer Negrete, was filled by permitting E. E. Rector to exercise seniority under the provisions of Rule 24(b), and in line with the parties' understanding of what constitutes a permanent vacancy in the section laborer class. There is no question concerning the relative seniority of the two employes here involved (Rector and Sanchez). The Employes admit, and the seniority roster proves, that Rector is senior to claimant by more than two years.

With these facts in evidence, there can be no decision except denial of the claim in its entirety.

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

(Exhibits not reproduced.)

OPINION OF BOARD: This dispute is between The Brotherhood of Maintenance of Way Employes and The Chicago, Burlington and Quincy Railroad Company.

Claimant, Sanchez was the senior laid off Employee from Section Y-21. Section Laborer Rector was the senior section laborer assigned to the Mullens section. A permanent vacancy in Section Y-21 was created by resignation. Rector was senior to Sanchez on the Roadmaster's territory and was allowed the permanent vacancy. Claimant contends that under a letter Agreement between the Organization and the Carrier, that he was entitled to the vacancy. The Carrier contends that this letter Agreement applies to a specific case and does not include the circumstances involved herein.

The pertinent part of the letter is as follows:

“In order to avoid uncertainty and misapprehension as to the application of Rules 10, 11 and 24(b), it is understood that a section laborer laid off in force reduction on his home section who exercises seniority on another section on the roadmaster's territory and at the

same time files form 2740A within the time limits specified in Rule 10 requesting that he be recalled to his home section will, when forces are increased on his home section, be recalled in preference to using any other employe on the roadmaster's territory who does not hold seniority on that particular section. For example, on a roadmaster's territory embracing four sections designated as Section A, B, C and D a section laborer who holds seniority on Section A is laid off in force reduction and exercises seniority on Section B and at the same time files form 2740A within the limits specified in Rule 10 requesting that he be recalled to his home section when forces are increased, it is our understanding that when forces are increased on Section A the employe referred to above will be recalled to Section A before any laborer holding seniority on Sections B, C, and D, but who does not hold seniority on Section A is permitted to exercise seniority under the provisions of Rule 24(b)."

This letter Agreement modifies Rule 24.

"Rule 24. (b) Employes in Grade 'C' of Group 1 of the Track Sub-department may exercise seniority to permanent vacancies or new positions in their grade on the Roadmaster's territory."

We are of the opinion that we must give strict interpretation to the letter modification. In so doing the letter agreement only applies to the specific instance cited therein. Therefore Rule 24(b) would be applicable. For the foregoing reasons, we believe the Agreement was not violated.

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 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 28th day of September 1962.