

Award No. 10982

Docket No. MW-10400

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

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

(1) The Carrier violated the effective agreement when, beginning on or about February 1, 1957, it used track forces from the Louisville Division to perform both straight-time and overtime work on the E. K. Division while the claimant employes were furloughed from and available for service on the E K Division and, as a consequence thereof

(2) The Carrier be ordered to allow the following claim which was appealed to Mr. W. S. Scholl, Director of Personnel in a letter dated April 23, 1957:

“ . . . claim filed on behalf of Dewey Stacy and Clarence Jet, at the rate of extra gang foreman, account of extra gangs under the supervision of Foremen Foster and Lane being transferred from the Louisville Division to the E. K. Division, beginning February 1, 1957, and claim for G. W. Clem and Sid Griffin, at the rate of Assistant extra gang Foreman, and

Willie Portwood
S. Rison
B. R. Helton
P. Johnson
G. L. Dennie
I. Miller
A. Puckett
Lewis Wilson
Eugene Newborn
Harlie Osborne
J. B. Rison

Wilgus Horn
Beverly Tipton
Ernest Griffin
Dennie Young
Brenton Frost
Alford Deaton
Elmer Griffin
R. L. Brewer
Vernon C. Wade
Robert Sparks, Jr.
Earl Griffin

Donald C. Winburn
Kenneth Tipton
Owen Dunaway
N. O. Rose
Daymond Morefield

Charlie Stamper
Melvin Hardin
Elmer Blevins
H. A. Tipton
Arthur Turner

at the extra gang laborer's rate, for pay at their respective straight time rates for 8 hours for each day, and at their respective penalty overtime rates for an equal number of hours of overtime made by employees assigned to extra gangs under Foremen Foster and Lane from the Louisville Division seniority district, and pay for 10 hours at their respective overtime rates for each Saturday and Sunday, and if extra gangs under Foremen Foster and Lane performed service on February 22, 1957, the employees listed above, for whom claim is made and who hold seniority on the E. K. Division, should receive two and one-half times their respective straight time rates, for 8 hours on February 22, 1957. If no work was done on February 22, 1957, by the extra gangs under Foremen Foster and Lane from the Louisville Division, then the employees listed above, for whom claim is made, should be paid for 8 hours at their respective straight time rates as holiday pay for February 22, 1957.

"The claim is made for the employees listed above so that they will be made whole because of extra gangs from another seniority district being transferred to the E. K. Division and performing work to which E. K. Division employees were entitled under their seniority rights and the applicable rules of the Maintenance of Way Agreement . . ."

EMPLOYEES' STATEMENT OF FACTS: At the close of work on January 15, 1957, another force reduction took place on the E. K. Division (Eastern Kentucky Division) as a result of which numerous track laborers were laid off. Account of the above-mentioned and other previous force reductions, a number of track foremen and assistant track foremen (including claimants Stacy, Jett, Clem and Griffin) were working in lower pay-rated ranks and classification.

As a result of the January 15th force reduction, the only extra gang on the E. K. Division was reduced to eight laborers. As a result of the force reduction of January 15, 1957 and of previous force reductions, track laborers and other track department employees with as much as 30 years of seniority on the E. K. Division were laid off. As of January 16, 1957, there were at least 100 employees furloughed from the Track Department on the E. K. Division.

Just fourteen days after the lay-off of January 15, 1957, a flood damaged tracks between Haddix, Kentucky and the southern extremity of the E. K. Division.

Without attempting to recall any employees furloughed from the E. K. Division, the Carrier sent two extra gangs from the Louisville Division to work on the E. K. Division. Each of said extra gangs consisted of a foreman, an assistant foreman and sixteen laborers. These extra gangs were in charge of Foremen Foster and Lane.

effective September 1, 1947, as revised to August 1, 1952, copy of which is on file with the Third Division, National Railroad Adjustment Board, confines seniority rights of employees to their respective seniority districts as established therein. However, Rule 10—Transfer From One Seniority District to Another, provides:

“(a) If it should be essential, in the opinion of the Management, to efficient operation to transfer an employee from one seniority district to another in the same subdepartment, that may be done.

“(b) A permanent transfer requires concurrence on the part of the employee concerned, and will not be made unless, after bulletining a vacancy or new position, there is no competent man on the district who bids for it. An employee permanently transferred under (a) and (b) shall take such seniority as he has with him; a temporary transfer shall not exceed 49 work days.”

Under the provisions of the foregoing there was no violation of the agreement in temporarily transferring the two extra gangs to the Eastern Kentucky Division. Section “A” clearly sets the transfer of employees as was done here to be one of managerial judgment and prerogative. Furthermore, Rule 48 which provides:

“Employees taken from their assigned territory to work at fires, washouts, or other conditions that may stop traffic, will be furnished meals and lodging by the railroad company if not accompanied by boarding cars; this rule not to apply to employees customarily carrying midday lunches and not being held away from their assigned territory an unreasonable time beyond the evening-meal hour. Employees will not be worked in excess of 8 hours without a meal.”

recognizes that employees might be used off their assigned territory to work at fires, washouts, etc.

The hardship which existed because of the flood applied not only to the L&N Railroad but perhaps what is more important to the citizens of the communities which it serves. The need for getting the railroad open as quickly as possible was foremost in the minds of the division officials, in order that these communities might obtain such relief as was needed to restore normal conditions to the population in these areas.

All matters referred to herein have been presented, in substance, by the carrier to representatives of the employees, either in conference or correspondence.

OPINION OF BOARD: Claims here are submitted on behalf of two extra gang Foremen, two assistant extra gang Foremen, and thirty-two

laborers, all Employees making claim are identified in the Statement of Claim, in addition to claims for straight time pay, for 8 hours service, such Employees are requesting pay at the overtime rate, for work performed at both straight and overtime rates, as is in effect for the respective positions held by each Employee. Such claims are premised on the allegations made, that Carrier violated the effective Agreement between the parties when it used Extra Gangs from the Louisville Division, to perform service on the Eastern Kentucky Division, on which all Claimants here hold seniority rights. It is contended that the Employees here involved were furloughed Employees, due to reduction in forces, and that Carrier violated its Agreement when it required Employees, holding seniority on the Louisville Division, to be sent to and perform service in the E. K. seniority district, to the detriment of the named Claimants here and by its refusal or failure to recall the furloughed Employees, on their own seniority district to perform the service required. The Employees rely on the provisions of,

Rule 4 — Seniority Districts

Rule 4 (a) and 4 (g)

Rule 21 — Force Reduction

Rule 22 — Return After Force Reduction,

to support their allegation.

Carrier contends, by way of denying the claims, and any violation of the Agreement, that due to flood conditions on the southern portion of its E. K. Division, causing considerable damage to its property between Jackson and Hazard, Kentucky, that because of damaged communications, washed out of roads, it had no means of calling the furloughed employees to return to their positions, and also because of the lack of sufficient tools and bedding by the Employees at Ravenna, it, of necessity, called upon two gangs of Employees from the Louisville District to go to the E. K. District to make the required repairs, because of emergency conditions existing, as caused by the flood conditions present.

The record shows that the Employees named here as Claimants, were track forces holding seniority on the E. K. Division. That such Employees, due to a reduction in forces on the E. K. Division, on January 15, 1957, such forces at Ravenna were reduced to one extra gang, consisting of eight laborers. That such Employees as here involved had complied with Rule 21 (c) and 21 (g), by giving Carrier notice through its Division Engineer, of their address, in order that their seniority rights may be properly protected. Carrier makes no denial that such compliance was not accomplished by such furloughed Employees. In fact there is evidence that an Employee had contacted the Carrier, and expressed his availability to return to work. Rule 22 (g) requires the Carrier to call the furloughed Employees to fill temporary vacancies, such as existed here.

The Employees here complied with the provisions of Rules 21 (c) and 21 (g). The record shows that Carrier made no effort whatever to call the Employees for service, to which they were entitled to perform, in view of their seniority, and the provision of Rule 22 (g). Carrier's only explanation was to the effect that it was not practical to attempt to locate all the furloughed Employees. This contention of Carrier carries no weight, here as Carrier made no effort to contact the Employees, therefore we are in no position to determine if such effort would have been practical or not.

Carrier did violate the Agreement, by its evident disregard of the provisions of Rules 4 (a) and 4 (c). The Claimants here held seniority rights on the E. K. Division, Carrier has given no reasonable explanation why it failed to respect the seniority rights of the Claimants, except that it would not be practical. The record shows that Carrier had first knowledge of the flood conditions occurring on the E. K. Division at 11:45 A. M., January 29, 1957, but no extra gangs were sent from the Louisville District until February 1, 1957, to make repairs to the damaged track, two days after it received direct information, as to the seriousness of the flood conditions. We find that Carrier had ample time to call the Employees at Ravenna, and properly equip the Camp cars, if they were not already so equipped. The parties disagree as to evidence regarding equipment, but it appears that Carrier did have a reasonable time to get such necessary equipment to Ravenna by train or other means of transportation, before the two gangs were called at Louisville to do the required work.

There is some evidence some of the named Claimants, did perform service for Carrier, with the Louisville gangs, but on positions allowing them a lower rate of pay, than their positions required under their position they would have filled had they been called to serve on their own gangs. Such involved Claimants are entitled to additional pay only for the difference between what they were paid by Carrier and what they would have earned had they been properly called by Carrier.

Some claims are also made by Employees for alleged service performed on February 22, 1957. The record convinces the Board that no service was performed on such date, that no service was required of the Louisville gangs, after February 15, 1957, when they were returned to their own headquarters. Such claims are not supported by the record here.

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 the Carrier did violate the Agreement.

AWARD

Claims sustained in accordance with the foregoing Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 18th day of December 1962.