

Award No. 11467

Docket No. MW-10505

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Preston J. Moore, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**MISSOURI-KANSAS-TEXAS RAILROAD COMPANY
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS**

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

(1) The Carrier violated the effective Agreement when subsequent to March 19, 1956, it arbitrarily abolished a number of section gangs and extended the limits of the remaining section gangs to include the territory and work comprehended in the abolished positions of Section Foreman and/or Section Laborers.

(2) All positions of Section Foreman and/or Section Laborers in effect prior to the abolishment of the section gangs referred to in Part (1) of this claim be restored.

(3) The Carrier now be required to allow each adversely affected employe the exact amount each lost because of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: Prior to November of 1955, the Carrier maintained a total of 328 sections on its property. Each gang, which consisted of a foreman, occasionally an assistant foreman, and a number of section laborers, was responsible for the maintenance and repair of the tracks and roadway included within the territorial limits of each section.

In November of 1955, the Carrier decided to change the method of maintaining its tracks. Accordingly, the Carrier's highest appellate officer addressed the undersigned General Chairman as follows:

and each of them, respectfully request the Third Division, National Railroad Adjustment Board, deny said claim, and grant said Railroad Companies, and each of them, such other relief to which they may be entitled.

(Exhibits not reproduced.)

OPINION OF BOARD: This is a dispute between the Brotherhood of Maintenance of Way Employees and the Missouri-Kansas-Texas Railroad Company of Texas.

Prior to November, 1955, Carrier maintained 328 sections on its property. In November of 1955 Carrier decided to change the method of maintaining its tracks. On November 9, Carrier's representative wrote Petitioner's General Chairman advising that 108 sections would be abolished. The last paragraph of the letter concluded:

"As the seniority question and other matters are involved by these changes, I shall be glad to go over the matter in conference on November 21."

Thereafter, on November 29, the same representative of Carrier wrote to the General Chairman stating that a conference was held and suggested that at the next meeting the parties should reach an agreement as to rates to be paid operators on the various types of machines. Other material in the letter discussed seniority and the rate of pay and other matters irrelevant to the subject matter herein.

Thereafter 108 of the then existing 328 section gangs were abolished on March 19, 1956. On February 11th and 18th of 1957, the Carrier abolished additional section gangs without conference or negotiation with General Chairman.

The original claim was based on the contention that the action of the Carrier was contrary to the declared position of the Carrier in their letters of November 9 and 29, 1955. This is the only claim which may properly be considered by this Board. The letters referred to did not constitute an Agreement. The "position" of the Carrier may be changed by the Carrier at will. There must be a violation of an Agreement between the parties before this Board may sustain a claim.

For the foregoing reasons, we find 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 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 Agreement was not violated.

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AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 6th day of June 1963.