

Award No. 12173
Docket No. MW-11436

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Michael J. Stack, Jr., Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
PACIFIC ELECTRIC RAILWAY COMPANY

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

(1) The Carrier violated the effective Agreement when it abolished the positions of Track Walker on Sections 1, 5, 7, 9, 11, 13, 15, 16 and 17 and, in lieu thereof, established one position of Track Walker on each of its three Roadmaster's districts to work under the supervision and direction of a Track Supervisor, thereby removing the positions and work from the Sections and the supervision thereof from the scope of this Agreement.

(2) Each of the Track Walkers named in the letter dated November 24, 1958 to Manager of Personnel L. R. McIntire by General Chairman Bailey be allowed the difference between what they received at the Track Laborer's rate and what they should have received at the Track Walker's rate because of the violation referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: On this property, Trackwalkers have always been a part of and assigned to a specific section and have patrolled the track, under the direction and supervision of the Section Foreman, on the territory comprehended in the section to which assigned.

Nonetheless, under date of October 23, 1958, the Carrier issued Notice No. AGM-E-123, reading:

"PACIFIC ELECTRIC RAILWAY COMPANY
OPERATING DEPARTMENT

Los Angeles, California
October 23, 1958

NOTICE NO. AGM-E-123

ALL CONCERNED:

The following positions will be abolished, effective with close of business Friday, October 31, 1958:

tion to data which may be presented by the Employes and of which the Carrier now has no knowledge.

(Exhibits not reproduced.)

OPINION OF BOARD: This issue is here raised:

Have the employes introduced sufficient evidence to establish that the Carrier breached the agreement when it abolished eighteen trackwalker positions in nine sections of a Roadmaster's district and concurrently established three trackwalker positions (under the direction of the Track Supervisors) whose duties covered the entire Roadmaster's district?

We hold that they have not.

In 1958 the Carrier abolished eighteen trackwalkers positions covering nine sections of one district and simultaneously offered for bid one position of trackwalker on its three Roadmaster districts who were in each case to work under the direction of the Track Supervisor.

The affected employes alleged that theretofore the same work had been performed by a gang assigned to each of the abolished sections under the direction of a Section Foreman.

It is here claimed that in the past custom and practice has established a requirement that trackwalkers under the direction of a Section Foreman had always been a part of and assigned to a specific section. This Carrier's action has disrupted the prior practice and transferred part of the Foreman's work to the Track Supervisor who is an employe not covered by the effective agreement.

The effect of this action, it is here claimed, has been to breach rights guaranteed by Rules 1 (seniority), 3 (seniority confined to sub-department), and 5 (sub-department seniority to be by classes).

We have read the record carefully and conclude that the evidence is inadequate to support the employes position and further that the rules do not support the interpretation urged.

The Carrier has denied the contentions of the Claimants with regard to past practice and no rebuttal evidence has been offered — the trackwalkers affected have system-wide seniority guaranteed by the agreement, which lends support to the Carrier's position. The Carrier has denied that any supervision has been removed from the scope of the agreement. The record is devoid of evidence to show the Track Supervisor exercises any of the supervision formerly exercised by the Section Foreman.

For failure to meet the burden of proof the claim must fail.

We have considered Carrier's contention that the claim was not handled in the usual way on the property since it was initiated with Carrier's highest officer. The failure of Carrier to object to this procedure on the property under these circumstances here present operated to waive the defense ordinarily available flowing from this defect.

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 7th day of February 1964.