

Award Number 13346

Docket No. MW-14639

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Ross Hutchins, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**CHICAGO, ROCK ISLAND AND
PACIFIC RAILROAD COMPANY**

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

(1) The Carrier violated the Agreement when it assigned employees who do not hold any seniority on the Southern Division 'old Southern seniority territory to perform painting work on said territory in December, 1962. (Carrier's file L-126-806—System File 9-P-146).

(2) Mr. J. R. Reynolds, Paint Foreman, be allowed pay at his pro rata rate for 640 hours and at his time and one-half rate for 60 hours because of the aforesaid violation.

EMPLOYES' STATEMENT OF FACTS: The claimant is the only employe who has established and holds seniority rights in the paint foreman's class and in the painters' class on the Southern District of the Southern Division. On July 18, 1961, the claimant's position as paint foreman was abolished. The claimant remained furloughed until he was recalled on March 12, 1962 and he was again furloughed on March 26, 1962.

On December 10, 1962, the claimant was recalled and, concurrently therewith, the Carrier assigned five employes who do not hold seniority rights on the Southern District to perform painting work on that district.

Messrs. A. H. Johnson, D. W. Johnson, J. W. Caton, F. E. Powell and R. F. Williams performed a total of 640 hours of painting work during regular hours and a total of 60 hours of painting work during overtime hours from December 10 to December 31, 1962. On December 31, 1962 the claimant was again furloughed.

The claimant was permitted to perform only five weeks of work on his seniority district during the year of 1962. He was available and fully qualified to perform all of the painting work on his seniority district and would have done so if the Carrier had assigned him to it.

If the Carrier could spread its work in such a manner there would be no need to have a rule such as Rule 6 in the Agreement. Since such spreading of the work is not possible, Rule 6 was incorporated into the Maintenance of Way Agreement to protect employees when they were affected by fluctuations in the volume of work.

Fluctuations in the volume of maintenance of way work are not uncommon as such work is controlled by budgetary and financial considerations as well as operational requirements.

In the instant claim, claimant was recalled to service and, inasmuch as there were no other employees on the "Old Southern Division's" seniority roster, five employees were assigned to the paint gang who held seniority on other seniority districts of the Carrier in the Maintenance of Way Department. Since claimant worked on the paint gang he, of course, suffered no loss in wages. To the contrary, he was returned to service from reduction in force status. Since claimant suffered no loss and, moreover, the Agreement was not violated, the claim should be denied.

OPINION OF BOARD: No substantial dispute exists in the majority of the facts in this case. The Claimant was the only employee who had established and held seniority rights in the paint foreman's class and in the painter's class on the southern district of the southern division of the Carrier. On July 18, 1961, the Claimant was furloughed and then recalled on March 12, 1962. He worked from March 12, 1962, until March 26, 1962, when he was again furloughed. The Claimant then remained on furlough until December 10, 1962. He worked from December 10, 1962 through and including December 31, 1962 at which time he was then again furloughed. From the period of December 10, 1962 until December 31, 1962, the Carrier assigned five (5) men and the Claimant to a painting crew. These five men were also members of another seniority district. These five (5) additional men performed 640 hours of painting work during regular hours and 60 hours of painting work during overtime hours. The Claimant contends that he is entitled to be compensated for the work which these five (5) additional men performed, stating the Claimant is entitled to the work.

If the Carrier is to be held liable, the Claimant must prove the Carrier has violated some law or rule of the Agreement. The Claimant cites Rule 2(a), 2(b), 2(c) and 2(d). Rule 2 and the sub-sections cited read as follows:

"Rule 2(a) Seniority begins when employee's pay starts, except promoted employees will establish seniority in the higher class only from the date assigned by bulletin to such vacancy or new position. Rights accruing to employees under their seniority entitle them to consideration for positions in accordance with their relative length of service with these railways as hereinafter provided. (Emphasis ours)

"2(b) Seniority rights of employees in seniority groups 1, 2, 3, 4, 5, 7, 8, 12, and 15 are confined to their respective groups . . .

"2(c) Scope of Roster. Seniority rosters will show the name and date of promotion by classes, and will be separately compiled for each group by seniority districts, except that names of laborers will not be included on seniority rosters until they have been in actual service in excess of ninety (90) days in any six (6) months period. (Emphasis ours)

"2(d) Roster. Rosters will be revised and posted in June of each year and will be open to protest for a period of sixty (60) days from date of posting. Effective with posting of roster of June 1st, 1936, protests on seniority dates for correction will be confined to names added since posting of previous annual roster, except to correct typographical errors.

"(1) Seniority districts will be established and seniority lists shall be established and seniority lists shall be issued for employees shown in Rule 1 under Groups 1, 2, 3(b), (c) and (d), 5, 6, 7, 8 and 12 separately by superintendents' operating divisions as existing on that date, except that on the Missouri-Kansas Division and Southern Division, seniority districts shall be:

"Missouri-Kansas Division

"Pan Handle District—From, but not including Herington, to and including Tucumcari. Dodge City Branch. Tucumcari to, and including, Amarillo. Livery to Amarillo Line. Dalhart to Morse Line.

"Missouri-Kansas District—St. Louis to Kansas City inclusive. From, but not including St. Joseph, to Herington, inclusive. Herington to Salina.

"Southern Division

"Oklahoma District—From, but not including Herington, to El Reno, inclusive. Ponca City Branch. Geary to Enid Branch. O'Keene to Alva Branch. Shawnee to Amarillo, but not including Amarillo.

"Southern District—From, but not including El Reno, to Dallas, inclusive. Chickasha-Mangum Branch, Andarka-Wauriku Branch, Graham Branch."

The Claimant states, "this division has consistently held all work within a specific seniority district must be reserved for employees holding seniority rights therein." To substantiate his position the Claimant cites Award No. 2050. In this award the work being performed by a clerk in one seniority district was transferred to the clerk in another seniority district. As part of its holding the court said:

"The board holds that under the rules as interrupted by the past practices when the work became so heavy (at New Athens) that it could not be performed by the agent, that instead of farming out this work to the East St. Louis district, the carrier should have established a clerical position at New Athens, to do this seasonal work."

Award No. 4653 is also cited in support of the position of the Claimant. This case also involves transfer of work out of one district into another district with the parties who originally had the work complaining that it has been transferred from their district to another district.

Likewise, in Award No. 4667 where the, "employees maintain that the transfer of this work out of their seniority district and into another was in violation of rules . . . of the agreement."

In Award No. 5413 roster "A" employees work load was heavier than usual and in order to assist the roster "A" man, a roster "B" employee assisted in the work. The Board stated that the sole question for consideration was to determine whether the Agreement required the Carrier to install the incumbents of the roster "A" positions. The Board held that the Carrier must call the incumbents. The Board then stated,

"This Board has held numerous times that in the absence of rules in agreements clearly to the contrary seniority rosters by districts prevent carriers from turning the work of those on one district seniority roster over to those of another even if the employees concerned are covered by the same agreement."

Additionally the Board said,

"since as we have indicated the carrier has provided no relief positions and there were no extra, furloughed or unassigned roster 'A' employees available, the regularly assigned incumbents . . . should have been called instead of the roster 'B' employees and the failure to so call them resulted in a violation of . . . the agreement providing that regularly assigned employees will be given preference when overtime is necessary on their positions."

However, the reason for roster "A" and roster "B" employees in Rule No. 4. Rule 4 provides roster "A" employees are icing inspectors and roster "B" employees are checkers with different duties and different responsibilities.

In Award No. 6021 the employees were again divided into groups with different duties and responsibilities. The Board in this case stated,

"The foregoing rules, in our opinion, suffice to definitely establish that separate seniority prevails by groups on the property of the Carrier under the existing contract and compel a conclusion that this case must be considered and determined in the light of the well established rule that in the absence of rules in Agreements clearly to the contrary seniority rosters by districts or by groups prevent the Carrier from turning the work of employees holding seniority on one District and/or Group Seniority Roster over to those holding seniority on another District or Group Roster even though employees are covered by the same Agreement."

Award No. 11752 cited by the Claimant relates to removal of work from a crossing watchman, who was a member of the Brotherhood of Maintenance of Way Employees and assigning that work to a member of the Telegraphers. This case bears no real relationship to the controversy now being considered.

These two groups of cases substantiate two propositions. First, that work belonging to one seniority district cannot be taken out of that seniority district and performed in another district. Secondly, that where there are more than one class of employees within a Brotherhood, work cannot be taken from one class and given to another. Neither of these propositions are the case at hand.

This docket involves the creation of new positions and the filling of these new positions with men from another seniority district.

Rule 2, Award 2050 and the other awards cited by the Claimants clearly give the Carrier two alternatives in assigning work in a given district and on a given roster.

1. The Carrier can give all the work to the employee or employees in a given district and on the particular roster involved. The Claimant seeks to have this alternative imposed upon the Carrier. However, the Carrier clearly has another alternative.
2. The Carrier may create new positions on the roster and in the district involved.

This docket does not involve the transfer of work from the district or roster of the Claimant, but rather the establishment of new temporary positions. Under Rule 4(a), 4(b) and 4(c) the Carrier is entitled to have new positions created.

"RULE 4. BULLETINING POSITIONS

"(a) All new positions or vacancies, except section men and laborers, will be promptly bulletined on bulletin boards accessible to all employees affected for a period of ten (10) days. Bulletin will show location, descriptive title and rate of pay. (See Memo No. 19)

"(b) Employees desiring bulletined positions shall file their application with the officer whose name appears on the bulletin. Assignments will be made and the name of the successful applicant posted within fifteen (15) days from the date bulletin is posted. New positions or vacancies may be filled temporarily pending permanent assignments. Copy of bulletin and notice of assignments will be furnished employees' representatives.

"(c) Positions or vacancies of thirty (30) days or less duration shall be considered temporary and may be filled without bulletining. Senior employees in the respective seniority groups will be given preference on such temporary positions."

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Rule 4(c) permits by its terms the Carrier to fill positions or vacancy of less than 30 days without bulletining. These positions were for less than 30 days. Rule 4(c) does not require the Carrier to give senior employees in respective groups preference on such temporary positions. However, this portion of the rule was complied with by the Carrier. This case does not amount to the assignment of work from one seniority group to another. Rather it concerns the creation of new positions on a temporary basis. Where these other employees came from is immaterial so long as the Carrier complied with Rule 4(c). The Carrier did so comply.

The Claimant contends that he could have performed this work at other times. But that is not an appropriate issue before this Board. It is firmly established that it is within discretion of management to determine how many men

and when those men will perform a given function in the absence of a rule in the contract prohibiting management's determination in this regard. The seniority rules do not establish when or how many men will perform a given job.

These men at the time of their assignment to perform the work in the Claimants seniority district became employees within that district under the provisions of Rule 4(c) and were not holding these positions as employees of a different district. We do not hold that a Carrier can assign men from a different seniority district and/or roster to perform work in a different seniority district and/or roster. We hold instead that the Carrier could and did properly create new positions within the Claimants district.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of February 1965.