Award No. 13382
Docket No. MW-13498

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Levi M. Hall, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

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

(1) The Carrier violated the Agreement when it refused to permit Mr. LeRoy Weeks to displace junior employe P. E. Vaughn upon the abolishment of Mr. Weeks' position on May 12, 1961.

(2) Mr. LeRoy Weeks now be allowed eight (8) hours' pay at the crossing flagman's straight-time rate for each date that junior employe P. E. Vaughn worked the crossing flagman's position at Dora, Alabama.

EMPLOYES' STATEMENT OF FACTS: On May 8, 1961, furloughed Section Laborer P. E. Vaughn, with a seniority date of September 30, 1948, began working a vacation vacancy on the highway crossing flagman position at Dora, Alabama.

On May 12, 1961, Section Laborer LeRoy Weeks, with a seniority date of July 23, 1945, was furloughed as a result of force reduction. Immediately thereafter he advised his supervisor of his desire to exercise displacement rights on the temporary vacancy here in question.

Without regard for the seniority rules of the Agreement, his request was denied, resulting in the instant claim.

The Agreement in effect between the two parties to this dispute dated April 1, 1951, together with supplements, amendments, and interpretations thereto is by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: Rule 10, Article 3 reads:

"The general rule of promotion and seniority will not apply to positions of track, bridge and highway crossing watchmen and

in this class of service shall be on the basis of seniority, except that incapacitated employes shall have displacement rights over able-bodied men. In the event two men hold the same seniority dating in this class of service, service seniority with the Railway shall prevail in the exercise of displacement rights."

Not only does the Carrier not permit the exercise of seniority displacement rights as involved in this dispute, the Carrier, as a general policy, has never permitted displacements among crossing flagmen except possibly in isolated cases in the same city or town. Indiscriminate displacements are not permitted among crossing flagmen and certainly no displacements are permitted on crossing flagmen positions by employes furloughed from District Gangs or otherwise.

The claim before the Board is entirely lacking in both merit and Agreement support and should be denied. If the Board finds that it cannot agree with the Carrier's position as hereinbefore outlined, then it is the Carrier's further position that Claimant Weeks is an improper claimant and the claim should be denied for that reason alone if for none other. See Carrier's Exhibit "A-2".

In conclusion, the reparations claimed in (2) of the Statement of Claim to the Board are for eight hours' pay for each date that P. E. Vaughn worked the crossing flagman position. Vaughn was appointed to such position on May 8, 1961. The claimant was not furloughed from the district gang until May 12, 1961. Therefore, Claimant was unavailable for service from May 8, 1961 until after May 12, 1961, and under no circumstances is there any basis for claim during such period. Neither is there any basis whatsoever for a claim in behalf of Claimant after the regular crossing watchman returned to work from vacation on June 4, 1961. The Organization's claim before the Board is not so limited. The claim before the Board is vague and indefinite. The claim initially presented and handled on the property was for certain specified dates: May 15, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, June 1, 2, 3 and 4, 1961.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts in this case, briefly, are, as follows: Prior to May 8, 1961, Section Laborer, P. E. Vaughn, with seniority date of September 30, 1948, was furloughed as a Laborer. A vacation vacancy on a Highway Crossing Flagman's position arose on May 8, 1961, and there being no incapacitated employes available, Carrier utilized Vaughn's services. Subsequently, three additional Section Laborers were laid off in force reduction May 12, 1961. Senior employe, LeRoy Weeks, the Claimant herein sought to displace junior Section Laborer Vaughn, Carrier denying his request.

Carrier contends that the vacation vacancy was properly filled pursuant to Article 3 — Rule 10 of the effective Agreement. Rule 10 reads, as follows:

> **"The general rule of promotion and seniority will not apply to positions of track, bridge and highway crossing watchmen and signalmen at railway (non-interlocked) crossings, but such positions will be filled by employes taken from the ranks of employes covered by this agreement** or covered by other agreements between the Railway and Brotherhood of Maintenance of Way Employes." (Emphasis ours)

It is Claimant's contention that in conformance with the Rulings and Understandings, adopted August 8, 1941, under Article 2 — Rule 4, 3 (a) thereof, he is entitled to displace a junior employe of his own classification, Section Laborer, who is temporarily relieving an employe of some other classification, that what is involved here is the displacement of a junior Section Laborer and not a displacement in a particular position.

It would appear from a reading of Article 3, Rule 10 that it goes to the position and not the man filling it. This rule specifically exempts **highway crossing watchmen positions** from the promotion and seniority rules of the Agreement. Such a rule permits the Carrier to fill such positions as it sees fit, so long as such positions are filled by employes taken from the ranks of the Maintenance of Way craft or class.

Having reached this conclusion it is unnecessary for us to determine whether or not LeRoy Weeks was a proper Claimant.

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 has not been 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.