



Award No. 14994

Docket No. MW-15530

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Levi M. Hall, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

THE DELAWARE AND HUDSON RAILROAD CORPORATION

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

(1) The Carrier violated the Agreement when it did not give Trackmen Basil Pleska, Cecil Heller, Anthony Baldini, Frank Bruno and Joseph J. Cruparo five (5) working days' advance notice before abolishing their positions on June 10, 1963. (System Case No. 9.64 MW)

(2) Each of the aforementioned trackmen be allowed five (5) days' pay at his respective straight time rate because of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The claimants were regularly assigned trackmen in Extra Gang No. 310, headquartered at Carbondale, Pennsylvania.

On Monday, June 10, 1963, the claimants were advised that they were to be furloughed in a force reduction effective at the close of work on that date. Inasmuch as the claimants were not given the required working days' advance notice, the subject claim was timely and properly presented and handled at all stages of appeal up to and including the Carrier's highest appellate officer.

The Agreement in effect between the two parties to this dispute dated November 15, 1943, together with supplements, amendments and interpretations thereto, is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: On May 28, 1963, Bulletin No. 85.63 was posted at every toolhouse on the Pennsylvania Seniority Division of this railroad advising all concerned that effective at the close of work on Friday, June 7, 1963, Extra Gang No. 300, a Tie and Ballast Gang, would be abolished. This abolishment affected a total of eighteen (18) positions. However, due to the fact that it was anticipated that an extra rail laying gang would be established in the near future, the senior twelve of

at its authorized strength of 7 men. This column also shows the assignment, to either Extra Gang No. 300, Extra Gang No. 200, or the Welded Rail Job of the other employees whose action in exercising their displacement rights resulted in the displacement of the claimants and the claim as made here.

The middle column indicates the disposition of the employees on Monday, June 10. It will be noted that 4 trackmen from abolished Extra Gang No. 300 had been temporarily assigned to Extra Gang No. 310, also that one of the employees from Extra Gang No. 300 had been temporarily assigned to Extra Gang No. 200.

The third column indicates the working force assigned to Extra Gang No. 310 as of June 11. It will be noted that the consist of the gang had been retained at 7 men. The 5 trackmen assigned to this gang on June 11 had exercised their rights to displace 5 junior men as of the close of business on June 10, 1963.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimants were regularly assigned trackmen in Extra Gang No. 310 with headquarters at Carbondale, Pennsylvania. On Monday, June 10, 1963, Claimants were advised that they were to be furloughed in a force reduction at the close of work on that date. It is the contention of Claimants that they were not given the five (5) working days' advance notice in accordance with Article III of the June 5, 1962 Agreement and that Claimants are entitled to be compensated at the straight time rate for the loss which each has suffered.

Carrier's initial response and explanation for its failure to comply with the provisions of Article III was based on the erroneous premise that Claimants were not regular members of Gang No. 310, contending they had been working in the Cycle Tie Gang No. 300 which completed its work June 7, 1963. Carrier, subsequently, asserted that Claimants had been displaced by employees senior to them who had been working on Gang No. 300. This assertion was emphatically denied by Claimants, and Carrier tendered no further proof in support of this assertion.

Carrier's submissions are based largely upon facts which were not presented nor discussed on the property during the handling of this dispute on the property. Whether or not its position therein presented would have supported a denial award we are not here concerned with because under prior understandings and decisions on this Board, we cannot consider argument on facts not presented on the property.

Award 5469 (Carter) states, in part: "Parties to disputes before this Board will not be permitted to mend their holds after they reach the Board on appeal and thereby create variances in the issues from what they were on the property." See, also, Award 8324 (McCoy), Award 13207 (McGovern), Award 13333 (Dorsey).

It is apparent in the instant case that the only conclusion which can be correctly derived from the facts and issues properly presented on the property is that Carrier failed to give Claimants five (5) working days' notice when reducing its forces because Claimant's Supervisor was not aware of the fact that they were regular members of Extra Gang No. 310 and that,

after the Agreement had been violated and the claim presented, Carrier sought to create a plausible defense by erroneously asserting that the Claimants were displaced by employees senior to them (other than the mere assertion Carrier made, there was no further offer of proof by Carrier.

The claim will be allowed, with the understanding that Carrier is entitled to an offset of earnings against any of the individuals named in it, if such employee exercised his seniority on any junior employee during the five (5) work days for which the claim is made.

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 Employee involved in this dispute are respectively Carrier and Employee 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 been violated.

AWARD

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of December 1966.