



Award No. 15178

Docket No. MW-15844

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

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

(1) The Carrier violated the Agreement when, on November 24, 1964, it terminated Track Laborer John A. Hancock's employment relationship and seniority status on Seniority District No. 10 (Carrier's File 2579-3).

(2) Mr. John A. Hancock's employment relationship and seniority status as track laborer or Seniority District No. 10 be restored.

EMPLOYEES' STATEMENT OF FACTS: The claimant had established and held seniority as a track laborer on Seniority District No. 10.

Effective June 24, 1964, the Claimant's position with Extra Gang 485 was abolished. Since there was no junior employe in his class whom he could displace, the claimant filed his name and address in accordance with the provisions of Article 3, Rule 11 in order to protect his seniority rights.

On July 2, 1964, the claimant wrote to the Division Engineer, with a copy to the undersigned General Chairman, requesting that he be considered for assignment to protect positions on other seniority districts. Within said written request, he indicated his desire to return to Seniority District No. 10 in the event of force increase (Article 3, Rule 12). Consequently, on July 10, 1964, the Carrier assigned him to protect a machine operator's position on Seniority District No. 9, which he held until it was abolished on December 14, 1964.

While the claimant was assigned to the machine operator's position on Seniority District No. 9, he received a letter from Roadmaster Winkles advising him that, if he wanted to return to Seniority District No. 10, he could "come to extra gang No. 486 at Ray Yard, Denison, Texas." However, since the opening on Extra Gang No. 486 was not created by a force increase, the claimant decided to and did remain on the machine operator's position to which he was then assigned.

As the result of the claimant's action, the Carrier, terminated the claimant's seniority on Seniority District No. 10 on November 24, 1964 contending that "when his seniority would permit him to return to Seniority District

OPINION OF BOARD: Carrier's action here subjected to claim occurred November 24, 1964. The Organization failed to file a claim with the Carrier officer—in this case, the division engineer, within the sixty-day limit of the August 21, 1954 Agreement. No claim was presented to the division engineer.

A dismissal Award is required. (Award 14368.)

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 dismissed.

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

**ATTEST: S. H. Schulty
Executive Secretary**

Dated at Chicago, Illinois, this 20th day of January 1967.