



Award No. 15365
Docket No. MW-16068

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 D. Cavender's employment relationship and seniority status on Seniority District No. 10. [Carrier's file 2579-3.]

(2) Mr. John D. Cavender's employment relationship and seniority status as track laborer on Seniority District No. 10 be restored and he be paid for all time lost subsequent to the abolition of Extra Gang No. 366 on December 10, 1964, when released by the Doctor for service.

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 No. 485 was abolished. Since there were no junior employees 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 3, 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, indicating Seniority District No. 9 as his preference. 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). In compliance with his request, on July 14, 1964, the Carrier assigned him to protect a track laborer's position on Seniority District No. 9 (Extra Gang No. 366), which he held until November 23, 1964 when he sustained a back injury.

While the claimant was assigned to the track laborer's position on Seniority District No. 9, he received a letter from Roadmaster Wheeler Winkles advising him that, if he wanted to return to Seniority District No. 10, he could "come to Extra Gang No. 483 at Muenster, Texas under L. Cherry foreman." However, since the opening on Extra Gang No. 483 was not created by a force increase, the claimant decided to and did remain on the track laborer's position to which he was then assigned.

The undersigned's letter of February 15, 1965 (Carrier's Exhibit A, Sheets 12, 13 and 14) to General Chairman Jones is self explanatory, and if the reader will pause at this point and read that letter in its entirety, Carrier feels that he will have a clear understanding of the reasons why in this particular case there were two appeals by the Organization to Chief Engineer Deavers, two declinations by Chief Deavers, two appeals to the undersigned, and two declinations by the undersigned in this case.

Under date of February 3, 1965 (Carrier's Exhibit A, Sheets 15 and 16) Division Engineer J. T. Hunter declined the claim presented by General Chairman Jones in his letter of December 17, 1964 (Carrier's Exhibit A, Sheets 4 and 5); that declination was subsequently appealed to Chief Engineer Deavers (Carrier's Exhibit A, Sheets 17, 18 and 19), declined by Chief Engineer Deavers (Carrier's Exhibit A, Sheet 20), appealed to the undersigned (Carrier's Exhibit A, Sheet 21) discussed in conference, and declined by the undersigned on April 5, 1965 (Carrier's Exhibit A, Sheets 23, 24, 25 and 26). Further correspondence from General Chairman Jones in this matter subsequent to the undersigned's declination is contained in the record as Carrier's Exhibit A, Sheets 27 and 28.

Although the handling of this claim on the property was somewhat unusual in that the General Chairman attempted to appeal to the Chief Engineer and the undersigned a claim that had not yet been declined by the Division Engineer, and was required to again appeal to the Chief Engineer and the undersigned after the declination of the Division Engineer was received by him, and the record in this case is rather confusing, it is nevertheless clear that the issue to be decided by the Board in this instance is simply whether Claimant Cavender's seniority rights terminated under the clear provisions of Article 3, Rule 11 when he refused to return to his home seniority district when notified of a vacancy thereon, or whether he was protected by Article 3, Rule 12, as alleged by the Organization.

The correspondence between the parties in connection with this alleged claim has been reproduced by photocopy processes and is attached hereto as Carrier's Exhibit A, Sheets 1 to 28, inclusive.

The current Agreement, No. DP-357, effective February 1, 1928 with Revisions to September 15, 1961, is on file with the Third Division, National Railroad Adjustment Board.

(Exhibits not reproduced.)

OPINION OF BOARD: This Claimant was employed as a Track Laborer on Extra Gang No. 485, Seniority District No. 10 on February 3, 1964 and established seniority on that District.

On June 24, 1964 his position was abolished. Due to lack of sufficient seniority he was unable to displace another employe in his Seniority District. Thereupon he assumed the status of a furloughed employe and filed his name and address with Carrier and Petitioner in conformity with the applicable rule.

On July 13, 1964, Claimant invoked the provision of the Agreement to obtain a position in Seniority District No. 9. On December 10, 1964 that position was abolished.

By notice dated October 17, 1964 Claimant was recalled to his home Seniority District No. 10.

Claimant failed to respond to the notice and his name was removed from the seniority roster in District No. 10.

Carrier's Division Engineer advised the Organization that the Claimant had forfeited his seniority in District No. 10 by failing to return to service when notified of a vacancy upon which he could place himself.

Argument offered in behalf of the Carrier is that the Claimant complied with Article 3, Rule 11, by filing his name and address as required, thereby protecting his seniority in District No. 10. Carrier states he forfeited his seniority in District No. 10 by failing to return to service in District No. 10 "when notified of a vacancy upon which he could place himself."

Organization's argument here is that Carrier's notice dated August 30, 1964, stating:

"I have open [SIC] for you if you want to come back to Extra Gang (District 10) at Muenster, Extra Gang No. 483. If you want to come, make connection with me at once."

was a permissive invitation to return to District No. 10, and Claimant had the option to accept or ignore the offer. It states flatly that Claimant had **no obligation to return to District No. 10.**"

It adds that "there is absolutely no evidence of probative value in the record to show that a **force increase** occurred or was even contemplated in Muenster Extra Gang No. 483 on August 30, 1964. . . ."

It is Rule 12 which relates to a situation where "additional employees are required on any given seniority district." That rule permits senior furloughed employees of another district to apply to a district where **"additional employees are required."** It is not involved here.

It being a fact that Claimant was, at the time involved, a track laborer furloughed from District No. 10 he could only have been furloughed within the requirements of Rule 11. If the Claimant desired to retain his seniority rights, he could only do so in accordance with Rule 11.

That rule states clearly that employees who fail to

"return to service within ten (10) calendar days after being so notified will forfeit all seniority rights."

Argument is made in behalf of the Organization that it was not proper "notification" to return to service within the meaning and intent of Rule 11; and "there was no increase of force indicated."

This latter position of the Organization is evidently predicated on Rule 12, which deals with a situation where "additional employees are required on any given seniority district . . . to protect positions on other seniority districts."

Such reliance by the Organization does not support the claim.

Carrier argues correctly it had no power to "order" Claimant to return to work on District 10. He should have known it was the only way in which he could protect his seniority on District 10. He was given proper notice. He failed to do so.

A denial Award is required.

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 17th day of February 1967.