

Award No. 15366
Docket No. MW-16072

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

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 Joseph Arnold's employment relationship and seniority status on Seniority District No. 10. [Carrier's File 2579-8.]

(2) Mr. Joseph Arnold'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 December 10, 1964 because of the violation referred to in Part (1) of this claim.

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

Effective at the close of the day's work on June 24, 1964, the claimant's position on Extra Gang No. 490 was abolished. Since there were no junior employees in his class that 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, indicating Seniority District No. 9 as his preference. Within said written request, he also indicated his desire to return to Seniority District No. 10 in the event of force reduction (Article 3, Rule 12). In compliance with his request, the Carrier, on July 13, 1964, assigned him to protect a track laborer's position on Seniority District No. 9 (Extra Gang No. 366), which he held until it was abolished on December 10, 1964.

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 back to Extra Gang at Muenster Extra Gang No. 483." However, since the opening on Extra Gang No. 483 was not created by a force increase, the

the record as Carrier's Exhibit A, Sheet 9) and on January 21, 1965 (Carrier's Exhibit A, Sheet 10), General Chairman Jones wrote the undersigned, purportedly appealing from the decision of Chief Engineer Deavers and requesting a conference.

The undersigned's letter of February 15, 1965 (Carrier's Exhibit A, Sheets 11, 12 and 13) 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 Engineer 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 14 and 15) Division Engineer J. T. Hunter declined the claim presented by General Chairman Jones in his letter of December 16, 1964 (Carrier's Exhibit A, Sheets 4 and 5); that declination was subsequently appealed to Chief Engineer Deavers (Carrier's Exhibit A, Sheets 16, 17 and 18), declined by Chief Engineer Deavers (Carrier's Exhibit A, Sheet 19), appealed to the undersigned (Carrier's Exhibit A, Sheet 20) discussed in conference, and declined by the undersigned on April 2, 1965 (Carrier's Exhibit A, Sheets 22, 23, 24 and 25). Further correspondence in this matter subsequent to the undersigned's declination is contained in the record as Carrier's Exhibit A, Sheets 26 to 29, inclusive.

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 Arnold'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 29, 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 case involves the same parties, issues and Agreement as in Award No. 15365. For reasons stated in that Award we will deny the Claim.

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 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.