

Award No. 15579

Docket No. MW-16277

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Don Harr, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
SOUTHERN PACIFIC COMPANY
(Texas and Louisiana Lines)**

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

(1) The Carrier violated the Agreement when it used an employe junior to Assistant Foreman C. C. Hensley to perform work as a relief foreman on Extra Gangs 419, 428 and 427 beginning June 7, 1965. (System claim MW-65-42.)

(2) Assistant Foreman C. C. Hensley now be allowed the difference between the rate of pay for Foreman on Extra Gangs 419, 428 and 427 and what he received at the Assistant Foreman's rate for all time consumed by the junior employe in performing the service referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The claimant has established and holds seniority rights as a track foreman on the Carrier's Dallas-Austin Division as of September 30, 1964. However, during the period involved in this dispute he was employed as a regularly assigned assistant track foreman on Extra Gang No. 423, with headquarters at Hearne, Texas.

The claimant received a letter dated March 29, 1965, which Division Engineer E. L. Woods addressed to all assistant track foremen on the Dallas-Austin Division, the pertinent portion of which reads:

"Will you please advise if you desire to do any relief work, exercising your seniority rights under Article VIII, Rule 6 of the MofW Agreement, working assignments for foremen off account vacation, sickness or for other reasons. If you will be available for these temporary assignments, kindly furnish me your U. S. mailing address and telephone number. If you do not desire to do relief work, send me a letter stating that you do not wish to work temporary vacancies."

On April 3, 1965, the claimant advised the Carrier that he was available to perform relief work.

"Houston, Texas
February 17, 1966

Mr. J. D. Davis, Manager of Personnel
Southern Pacific Company, T&L Lines
Houston, Texas 77001

Postmarked February 17, 1966.

Dear Sir:

With further reference to your letter of September 13, 1965, File MW-65-42, claim of Assistant Track Foreman Mr. C. C. Hensley, claiming the difference between the rate of pay he received as assistant foreman and the rate of pay applicable to the foreman's position beginning June 7, 1965, and to continue for the duration of the relief work on Extra Gangs Nos. 419, 428 and 427, and our conferences September 19, 1965, October 27, 1965 and January 28, 1966.

In our conference of January 28, 1966, I advised you it was obvious that we would not be able to satisfactorily dispose of this claim on the property and it was understood that we would present File MW-65-42 to the Third Division of the Railroad Adjustment Board for final disposition and I am this date, February 17, 1966, forwarding this file to our representative in Chicago for his handling before the Third Division.

Yours very truly,

/s/ M. Burrough
M. Burrough
General Chairman

MB/ma"

OPINION OF BOARD: On March 29, 1965, a letter was addressed to assistant track foreman requesting that they advise the Carrier if they desired to do relief work.

This letter read in part:

"Will you please advise if you desire to do any relief work, exercising your seniority rights under Article VIII, Rule 6 of the MofW Agreement, working assignments for foremen off account vacation, sickness or for other reasons. If you will be available for these temporary assignments, kindly furnish me your U. S. Mailing address and telephone number. If you do not desire to do relief work, send me a letter stating that you do not wish to work temporary vacancies."

Claimant replied on April 3, 1965, that he was available for temporary assignments. When Claimant was offered an opportunity to do relief work he refused the work unless he was allowed expenses. Subsequently Carrier assigned an employe junior to Claimant to perform the work in question.

The Employes progressed this claim alleging a violation of the effective agreement and the Vacation Agreement, dated December 17, 1941.

After a careful review of the Agreement we can find no violation by Carrier. The Carrier properly filled the temporary vacancies under Article

VIII, Rule 6 of the Agreement. Carrier properly offered the temporary work to Claimant and he refused, they then gave the work to the employee next in line by seniority.

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 19th day of May 1967.