



Award No. 15605
Docket No. MW-13549

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John H. Dorsey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
THE DAYTON UNION RAILWAY COMPANY

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

(1) The Carrier violated the Agreement when, on August 28, 29, 30 and 31, 1961, it used Bridge and Building department forces to perform work in connection with the renewal of track switch 53-A while Trackman Dorsey Howard was laid off, willing and available to perform such track department work.

(2) Furloughed Trackman Dorsey Howard now be allowed thirty-two (32) hours' pay at his straight-time rate and three and one-half (3½) hours' pay at time and one-half rate account of the violation referred to above.

EMPLOYES' STATEMENT OF FACTS: On Friday, August 25, 1961, the Claimant was furloughed as a result of a force reduction.

Beginning Monday, August 28, 1961 and continuing through August 31, 1961, while the Claimant was yet furloughed but available for service, the Carrier assigned Bridge and Building Sub-department employees to assist Track Sub-department employees in performing the work of renewing switch 53-A and certain other track work incidental thereto.

Employees of the Track Sub-department have traditionally and historically performed all work necessary in installing, repairing and maintaining switches.

The Agreement in effect between the two parties to this dispute dated September 1, 1949, together with supplements, amendments, and interpretations thereto is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: Employees of the Dayton Union Railway Company covered by Agreement with the Brotherhood of Maintenance of Way Employees are divided into two sub-departments as follows:

OPINION OF BOARD: Claimant was employed as a Trackman in the Maintenance of Way Department, Track Sub-department on April 10, 1961. He was laid off on Friday, August 25, 1961. On the following Monday, August 28, Carrier, for a period of 4 days, assigned Bridge and Building Sub-department employees to assist Track Sub-department employees in performing the work of renewing Switch 53-A and certain other work incidental thereto. That the work of installing, repairing or maintaining switches has traditionally and historically been performed by employees in the Track Sub-department is not refuted. That the assignment of the Bridge and Building Sub-department employees to the work was a de facto increase of force in the Track Sub-department stands apparent.

It is Petitioner's position that: (1) the work involved is reserved to employees holding seniority in the Trackman class; and (2) Carrier's failure to assign Claimant, an available laid-off employee in the Trackman class, violated the Agreement.

Carrier's defenses are: (1) citing Rule 6 (Roster), Claimant had no seniority; and (2) Rules 36 (Composite Service) and 39 (Consent to Transfer) permitted the action taken in augmenting the Section Force with other than the furloughed Track Department employee.

Rule 6 reads:

"Seniority roster of employees of each sub-department will be separately compiled. Copies will be furnished foremen and employees, representatives, same to be placed in tool houses, or some available place for inspection by employees interested. Seniority roster will show the name and last date of entry of the employee into the Maintenance of Way Department and date of promotion, except that the names will not be included and will not apply in their sub-department until they have had continuous service of the railroad in excess of six (6) months."

This Rule pertains only to the establishment of seniority rosters. It does not qualify the unequivocal language of Rule 1 (Seniority) that:

"Seniority begins on the date the employee last entered the service of the Maintenance of Way Department."

Consequently, we find that Claimant had seniority rights at all times material herein, and those rights, insofar as here material, are prescribed in the following Rules:

"RULE 2. RIGHTS

Rights accruing to employees under their seniority entitle them to consideration for positions in accordance with their relative length of service with the railroad, as hereinafter provided."

"RULE 3. LIMITS

Seniority rights of all employees are confined to the sub-department in which employed. Except as provided in these rules, when force is reduced the senior men, in the sub-department, capable of doing the work shall be retained. When force is increased, the employee will return to former position." (Emphasis ours.)

As to Carrier's other defenses: (1) We have held that rules such as Rule 36 (Composite Service) do not authorize a carrier to disregard the seniority rights of an employe where the work clearly belongs to a class of which he is a part (Award No. 12688); (2) Rule 39 (Consent to Transfer) was not proffered as a defense on the property — it is untimely raised in the Carrier's Submission.

We find that Claimant had seniority (Rule 1); and, his contractual rights vested by Rules 2 and 3 were violated when Carrier failed to recall him to perform the work involved. We will sustain 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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 31st day of May 1967.