



Award No. 15700
Docket No. MW-13603

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John H. Dorsey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

WABASH RAILROAD COMPANY

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

(1) The Carrier violated the Agreement on June 12, 13, 14, 15 and 16, 1961, when vacationing Extra Gang Foreman G. W. McGee was relieved by Mr. A. J. Kloepper who holds foreman's seniority from September 6, 1957 instead of by Mr. Victor Gullledge, who holds foreman's seniority from June 5, 1950.

(2) Mr. Victor Gullledge be paid the difference between what he was paid at the section laborer's rate and what he would have been paid at the extra gang foreman's rate if he had been properly assigned to relieve Mr. McGee on June 12, 13, 14, 15 and 16, 1961.

EMPLOYES' STATEMENT OF FACTS: Prior to June 12, 1961, Claimant Victor Gullledge, account of force reduction, was working as a Section Laborer in Section Gang No. 4 while Mr. J. W. Kloepper was employed as Assistant Extra Gang Foreman in Extra Gang No. 2.

During the period June 12 to June 16, 1961, inclusive, regular Extra Gang Foreman G. W. McGee was on his annual vacation. Mr. J. W. Kloepper, who has a seniority date of September 6, 1957 as Section Foreman, was assigned to and did fill the temporary vacancy thereby created.

Claimant Victor Gullledge, who has a seniority date of June 5, 1950 as Section Foreman, was available, willing and qualified to perform the subject relief work, but was not called to do so.

The Agreement in effect between the two parties to this dispute dated June 1, 1940, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: Mr. Victor Gullledge entered the service of this Carrier in the track sub-department of the Maintenance of Way Department on the St. Louis Terminal Division on June 1, 1938, as a section laborer; was promoted to section foreman on June 5, 1950; and

CERTIFIED - Return Receipt Requested

Mr. Victor Gulledge, Local Chairman
Brotherhood of Maintenance of Way Employees
4325 N. 19th Street
St. Louis 7, Missouri

Dear Sir:

Referring to your letter of June 16, 1961, making a claim for the difference in pay of a Section Laborer and Extra Gang Foreman, for the five day period June 12th through 16th, 1961, inclusive, account of another man working as an Extra Gang Foreman.

Rule 2, paragraph (1), quoted in your letter and reading as follows:

'1. In filling vacancies on positions designated in Rule 1, paragraph (d), of this agreement, the senior qualified employe holding seniority in the classification where the vacancy occurs will be given preference. In the event the seniority roster of employes in the classification where a vacancy occurs is exhausted, the vacancy will be filled by using a qualified employe in the track and bridge and building sub-department of the Maintenance of Way and Structures Department.'

This applies to positions designated in Rule 1, paragraph (d), of the agreement which includes operators of various types of machines only. The position of Extra Gang Foreman is designated in Rule 1, paragraph (a).

There is no rule in the Vacation Agreement or other agreements to substantiate the alleged claim, so it is without basis under effective agreements and is, therefore, denied.

Yours truly,

/s/ H. R. Bane
Division Engineer"

Although the claim was subsequently appealed by the General Committee to both the Chief Engineer and the Manager-Personnel, the Committee did not in so doing refer to any rule in the Maintenance of Way Employees' agreement in support of the contention that the use of Mr. Kloepper on the temporary vacancy was in violation of the Maintenance of Way Employees' agreement, but merely stated that Mr. Gulledge should "have been assigned to this position * * * by reason of his greater seniority as foreman."

Copy of all of the correspondence had between the parties to this dispute is attached hereto and made a part hereof, marked Carrier's Exhibit A.

OPINION OF BOARD: Carrier assigned an employe, junior in seniority to Claimant, to a 5-day vacation vacancy on a Foreman's position. The Claim filed with the Terminal Engineer alleged violation of Rule 1, paragraph (d),

of the Agreement. Carrier responded that the cited Rule was not applicable, and went on to say:

"There is no rule in the Vacation Agreement or other agreements to substantiate the alleged claim, so it is without basis under effective agreements and is, therefore, denied."

In the appeal to the Chief Engineer, the General Chairman did not cite any rule(s) of the Agreement which he contended to be violated. He averred:

"It is the claim of the employes that Mr. Gulledge, by reason of his greater seniority as foreman, should have been assigned to this position."

The Chief Engineer denied the Claim for the same reasons given by the Terminal Engineer. On appeal to Carrier's highest officer, the General Chairman failed to cite any Rule, and stated:

"Although the rule referred to by Mr. Gulledge in filing his claim is not applicable, it is the position of the employes that Mr. Gull-edge by reason of his greater seniority as foreman should have been assigned this position."

This ultimate appeal on the property was denied for the same given reasons.

The issue is whether Petitioner to perfect its case had the burden of specifying the rule(s) allegedly violated. When confronted with the same issue, we have held that Petitioner had the burden. For reasons stated in Award Nos. 13741, 14081 and 14772, we will dismiss the instant 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 Employes involved in this dispute are respectively Carrier and Employes 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

In failing to particularize the Rules allegedly violated, when it had the burden of doing so, Petitioner failed to perfect its Claim.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June 1967.

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