Award No. 16004
Docket No. MW-13725

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

SOUTHERN PACIFIC COMPANY
(Pacific Lines)

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

(1) The Carrier violated the Agreement when it directed and required Extra Gang Foreman Joe P. Beaty to assume the duties, responsibilities and work load of two positions during the vacation absence of Extra Gang Foreman E. E. Barnts on June 12, 13, 14, 15, 16, 19, 20, 21, 22 and 23, 1961.

(2) Extra Gang Foreman Joe E. Beaty be allowed an additional eight (8) hours' pay at the straight-time rate of Extra Gang Foreman E. E. Barnts' position for each of the ten (10) work days involved in the violation referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: The Claimant has established and holds seniority as an Extra Gang Foreman within the Track Sub-department on the Portland Division of the Southern Pacific Company, and is assigned as Extra Gang Foreman on Extra Gang No. 46. His seniority dates are as follows:

Foreman 6/3/43
Service date 3/3/39

Commencing on June 12, 1961, Mr. E. E. Barnts, Foreman of Extra Gang No. 41, took his assigned vacation from June 12 to and including June 23, 1961. In lieu of providing a vacation relief employe to fulfill the duties and responsibilities of Foreman of Extra Gang No. 41 during Foreman Barnts' absence while on vacation, the Carrier required the claimant to assume those duties and responsibilities in addition to the duties and responsibilities of his own position as Foreman on Extra Gang No. 46.

As a result thereof, claimant supervised and directed, and was required to assume responsibilities for the work of Extra Gang No. 41 in addition to that of his own Extra Gang No. 46; to make and submit necessary reports covering time worked by both gangs; to report material used by either or both gangs; for accidents that might occur on either or both gangs and other similar duties and/or responsibilities.

The Agreement in effect between the two parties to this dispute dated January 1, 1953, together with supplements, amendments, and interpretations thereto is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS:

1. There is in evidence an agreement (hereinafter called the current agreement) between the Carrier and its employes represented by the Petitioner, having effective date of January 1, 1953, a copy of which is on file with the Board and is hereby made a part of this submission.

2. Prior to June 12, 1961, Extra Gang No. 46 under Foreman Beaty and Extra Gang No. 41 under Foreman Barnts had been working on a double-shift basis. During the period June 12-16 and 19-23, 1961, Foreman Barnts was absent on his scheduled vacation period. The Carrier was unable to secure a foreman to fill this vacancy; furthermore, other members of Extra Gang No. 41 also were to be on vacation during this period, with result that there was but one employe of Extra Gang No. 41 actually working on June 12, 1961, two employes so working June 13 to 16, inclusive, 1961, and three employes so working June 19 to 23, inclusive, 1961. In these circumstances, the Carrier chose to blank the position of Foreman, Extra Gang No. 41, during Barnts' absence, changed operations from a double-shift to a single-shift basis, with only Extra Gang No. 46 working, and transferred temporarily the remaining working members of Extra Gang No. 41 to Extra Gang No. 46 under Foreman Beaty.

3. By letter of August 13, 1961 (Carrier's Exhibit A), Petitioner's local chairman submitted claim for Mr. Joe Beaty (hereinafter referred to as claimant) for ". . . double time for the regular working days from June 12th to June 23, 1961." By his letter of September 14, 1961 (Carrier's Exhibit B), Carrier's Superintendent denied the claim. Petitioner's General Chairman appealed instant claim to Carrier's Assistant Manager of Personnel by letter of November 9, 1961 (Carrier's Exhibit C). By his letter of December 5, 1961 (Carrier's Exhibit D), the Assistant Manager of Personnel denied the claim, pointing out that certain dates thereof did not come within the time limits prescribed by paragraph 1(a) of Article V of the Agreement of August 21, 1954.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant, the assigned Extra Gang Foreman of Extra Gang No. 46, seeks compensation at the straight-time rate for ten (10) work days during which period he allegedly was required to perform the duties of two positions, while another Extra Gang Foreman was absent on vacation.

Initially, Carrier contends that the claim for all dates prior to June 16, 1961 is barred because the Claim was not filed with Carrier within the time limit established by paragraph 1 (a) of Article V of the National Agreement of August 21, 1954. The issue was properly raised by Carrier's highest officer on the property. (National Disputes Committee Decision No. 5.) Accordingly, claims for dates prior to June 16, 1961 are barred under Article V.

Carrier denies that Claimant supervised two separate Extra Gangs while another Extra Foreman was on vacation as alleged by Petitioner, and that the position of the vacationing foreman was blanked during his absence with a

temporary transfer of his extra gang employes to Claimant's Gang during the period in dispute.

Petitioner presumes that Claimant performed all of the necessary duties of the Vacationing Extra Foreman as well as all of the duties of his regular position, which Carrier emphatically denies. No probative evidence was offered by Petitioner concerning the number of hours spent by Claimant performing assignments normally performed by the Vacationing Foreman.

The fundamental issues involved in this case arise out of Articles 6 and 10 (b) of the Vacation Agreement of December 17, 1941. Even if we were to accept Petitioner's contested assertion that Claimant actually supervised two separate Extra Gangs on the dates of Claim, Petitioner has the burden of further proving through competent evidence that either Article 6 or Article 10 of the Vacation Agreement of 1941 was violated by Carrier. (Awards 15037, 14397 and others.)

Here, we find no probative evidence in the record to support a finding either that more than 25% of the work load of the vacationing foreman was performed by Claimant or that any employe was burdened by Carrier's failure to provide a vacation relief employe for the vacationing foreman. Mere assertions do not satisfy the burden of proof. Therefore, the Claim must be denied. (Award 15830.)

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

That the Agreement was not violated.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of December 1967.

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