

Award No. 18785
Docket No. MW-19223

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
THE DENVER AND RIO GRANDE WESTERN RAILROAD
COMPANY

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

(1) The Carrier violated the Agreement when it called and used B&B forces and Colorado Division track forces to perform track work on the Utah Division between Montrose and Olathe, Colorado on February 4, 5 and 6, 1970 instead of calling and using cut-off Utah Division track employes (System File D-9-29/MW-9-70).

(2) Section Laborers A. J. Burton, F. R. Valdez, R. B. Keel and S. Chavearria each be allowed twenty-four (24) hours' pay at their respective straight time rates and an additional ten and one-half (10½) hours' pay at their respective time and one-half rates because of the violation referred to in Part (1) hereof.

(3) The Carrier shall also pay the claimants six (6%) percent interest per annum on the monetary allowances accruing from the initial claim date until paid.

EMPLOYEES' STATEMENT OF FACTS: The claimants are cut-off section laborers who hold seniority rights in that class within the Track Sub-department on the Utah Division. Their seniority rights are confined thereto in accordance with the provisions of Rule 6(c) which reads:

"Except as provided in subsection (c) of Rule 9 seniority rights of all employes shall be confined to the seniority district and sub-department where employed."

When the claimants were laid off, they protected their seniority rights by filing their respective names and addresses with the proper Carrier officer in compliance with Rule 12(c) which reads:

"Employes cut off in force reduction desiring to avail themselves of the right to recall must file their name and address in writing within fifteen (15) calendar days from the date cut off in force reduction. This information shall be filed with the Roadmaster

Also find enclosed signed statements from Mr. F. R. Valdez and Mr. S. Chavearria, with two witnesses signatures on said statements, that he had been called to report for work by Mr. Ben Ochoa and later called by Roadmaster R. E. Bunker not to report for work. Also Mr. Bunker informed Mr. Ochoa that he (Mr. Bunker) would recall Mr. A. J. Burton at Delta, Colorado to report for work.

As these three employes were recalled to work and later informed not to report to work, therefore all available employes were not recalled for this service. These statements prove that these employes were first recalled and later refused the right to work.

Very truly yours,

/s/ W. P. Fraser
General Chairman

WPF: ejp

cc: J. J. Berta — Your File 50-90
Ben Ochoa
F. R. Valdez
S. Chavearris
R. C. Phillips

opeiu-5"

Claim was timely and properly presented and handled by the Employees at all stages of appeal up to and including the Carrier's highest appellate officer.

The Agreement in effect between the two parties to this dispute dated January 1, 1969, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: On February 3, 1970, there was a derailment at Mile Post 359.5 on Carrier's Montrose Branch located on the Utah Division, which blocked this line for a period of four days.

This derailment occurred in the territory assigned to the Montrose section gang. In addition to using this section gang, Carrier also called section gangs from Delta, Paonia, Grand Junction, Cisco and Palisade. All of these sections, with the exception of Palisade, are on the Utah Division. Carrier also used a B&B gang from Utah Division as well as mechanical forces in clearing this derailment.

OPINION OF BOARD: The record shows that on February 3, 1970, there was a derailment at Mile Post 359.5 on Carrier's Montrose Branch, located on the Utah Division. In addition to using certain section gangs from the Utah Division, a section gang from the Colorado Division and a B&B gang were used to augment the section forces of the Utah Division. The claimants were furloughed track employees of the Utah Division.

The Carrier contends that the claim should be dismissed on two grounds, the first being that the submission of the Petitioner was not filed with the Board in accordance with the provisions of Circular No. 1. There is no proper

basis for such contention. The submission of the Petitioner was filed in accordance with the rules of the Division. The Carrier contends secondly that the claim as submitted to the Board is not the same claim as handled on the property. This contention is also without proper support. The claim before the Board is substantially the same as handled on the property. The question throughout was one of track repairs at a derailment. The complaint was that other than track forces of the Utah Division were used in lieu of using furloughed track forces of the Utah Division. The Carrier has not been misled, nor has the claim been enlarged upon. The Carrier's requests that the claim be dismissed are denied.

As to the merits of the dispute, the record shows that the claimants, furloughed track employees of the Utah Division, were called by the Roadmaster and Foreman about 3:00 P. M., February 3, 1970, to report for work on February 4, 1970. Later the same day the Roadmaster instructed that they not be recalled. We agree with the argument in behalf of the Petitioner that under the circumstances the availability of the claimants could not be questioned. The fact that they were called and then later told not to report indicates that those in charge considered that they had an agreement right to return to work. Under the facts as shown in the record they should have been called and used to perform the work in preference to employees who did not hold any seniority rights in the Track Sub-department and to employees who did not hold any seniority on the Utah Division. We will sustain parts (1) and (2) of the claim, but will deny part (3).

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds that:

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 violated.

AWARD

Parts (1) and (2) of the claim are sustained;

Part (3) of the claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of October 1971.

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