



Award No. 19106
Docket No. MW-19193

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
THE ILLINOIS CENTRAL RAILROAD COMPANY

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

(1) The Carrier violated the Agreement when it assigned eight (8) section laborers from Supervisor Edwards' district to perform track work on Section 22 at Jackson, Mississippi on February 3, 4, 5, 6, 7, 10 and 11, 1969 (System File LA-87-T-69/Case 618.)

(2) Section Laborers Racy Brown, S. Craig, Robert Brown, Judge Davis and R. Patterson each be allowed pay at their respective straight time rates for an equal proportionate share of the total number of man hours expended by the laborers from Supervisor Edward's district in the performance of the work referred to within Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The claimant are track laborers regularly assigned to Section Gang #22 at Jackson, Mississippi, which is within Supervisor Moore's district.

The seniority of section laborers is confined to their gangs, except when forces are reduced, they may exercise seniority throughout the Supervisor's district on which employed as per Rule 6(f) which reads:

"Seniority rights of section laborers in the Track Department as such will be restricted to their gangs, except when forces are reduced laborers affected will have the right to displace junior laborers in service on the Supervisor's District on which employed."

Notwithstanding the clear provisions of the aforecited rule, on February 3, 4, 5, 6, 7, 10 and 11, 1969, the Carrier assigned eight (8) track laborers, whose seniority is restricted to the section gang at Crystal Springs on Supervisor Edwards' district, to perform the tie renewal work on the claimants' assigned section territory (Supervisor Moore's District).

The claimants were available, fully qualified and willing to have performed this work if the Carrier had so desired.

Also controlling here is Rule 16(a) reading:

"Employees will not be temporarily transferred by management from one seniority district to another except when necessary because

of flood, fire, storm, hurricane pressing necessity, or when agreed to between management and General Chairman. Employees thus transferred will retain seniority rights on the district from which transferred."

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 September 1, 1934, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: A tie renewal program was in progress on Section 22 of the Louisiana Division in February, 1969. All the available members of the section gang assigned to Section 22 were assigned to the program. In order to perform the work it was necessary to augment the work force of the section gang.

Inasmuch as there was more work than the regularly assigned employees could perform the company was free to hire additional employees to work on the section; subcontract the work; or assign available track laborers from other sections to assist the members of gang 22. The company elected to follow the latter course of action and assigned the members of the Crystal Springs gang to assist in the program. The members of the Crystal Springs gang did not transfer to Section 22. They went on and off duty at their regular headquarters point at the beginning and end of each work day. To repeat, the Crystal Springs gang was not transferred to Section 22. The gangs worked together on the tie renewal program and neither gang lost any time as a result of the adjustment of forces. No overtime was performed by the Crystal Springs gang.

The correspondence is attached as Company's Exhibit A.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim arose as a result of Carrier requiring track laborers from Crystal Springs on Supervisor Edwards' district to assist in performing tie renewal work on Section 22 seniority district. Supervisor Moore's district, on the dates in question.

The Organization relies on Rule 2 and 16(a) of the Agreement, alleging that Carrier violated said rules when the laborers from Crystal Springs moved across Supervisor's seniority lines in assisting the laborers on Section 22.

Rule 16(a) of the Agreement provides as follows:

"TRANSFERS

RULE 16. (a) Employees will not be temporarily transferred by management from one seniority district to another except when necessary because of flood, fire, storm, hurricane, pressing necessity, or when agreed to between management and General Chairman. Employees thus transferred will retain seniority rights on the district from which transferred."

Carrier relies on past practice in support of its defense of this claim. However, here we are dealing with a clear and unambiguous rule and past practice cannot be relied on in the face of such a rule.

As was said in this Board's Award No. 16830, involving the same parties to this dispute:

"The above quoted Rule 16(a) is clear and free from ambiguity; therefore, it is not subject to more than one interpretation. It contains specified exceptions to the provisions prohibiting the transfer of employes from one seniority district to another, and this Board is without authority to infer or imply further exceptions. See Awards 2009, 5464, 13863 and 15467 of this Division."

Carrier offered no proof of "pressing" need for use of said laborers in question, and it is undisputed that the Carrier and the Organization did not agree to the transfer; thus we find Carrier violated said Rule 16(a).

In regard to damages, inasmuch as Claimants suffered no pecuniary loss, we will deny part (2) of the Statement of Claim.

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 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 violated in accordance with the Opinion.

AWARD

Part (1) of the Statement of Claim is sustained.

Part (2) of the Statement of Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 24th day of March 1972.