

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26361  
Docket Number MW-26689

John E. Cloney, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**  
(Canadian Pacific Limited (on lines operated in the **States**  
(of Maine and Vermont in the U.S.A.)

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

(1) The Carrier **violated** the **Agreement** when it failed to recall furloughed Extra **Gang** Laborer S. W. Peck to service on and subsequent to July 11, 1983 (Carrier's File P-2653).

(2) **Extra Gang** Laborer S. W. Peck shall be recalled to service with **seniority** and all other rights unimpaired and he shall be compensated for all wage loss suffered retroactive from November 29, 1983."

OPINION OF BOARD: Claimant established seniority as an Extra Gang Laborer on May 12, 1980, working in the State of Vermont. He was furloughed in 1981 in a force reduction and remained on furlough throughout 1982. In **about** July, 1983, some furloughed Extra Gang Laborers were recalled, among them one Woodruft, an **employee** junior to Claimant. Claimant was recalled on November 29, 1983, on which date he apparently **learned** for the **first** time of Woodruft's recall. On the same date he wrote Roadmaster Goss claiming time **lost** since the date Woodruft was recalled.

Rule 1 of **the** Agreement states:

"1.1 By Maintenance of Way **Employee** is meant employees working in the Track and Bridge Building Departments, for whom rates of pay are provided in this Agreement. **Labourers** in extra gangs, unless **those** engaged practically all year round, shall not be considered as coming under this schedule."

Extra Gang Laborers are covered by "Appendix G" rather **than** the "Main" Agreement:.

Section 6 of Appendix "G" provides:

"6.7 Laid off employees shall be recalled to service in order of seniority when **staff** is increased or when vacancies **occur**."

Article 11.5 of the "Main" Agreement apparently provides that **employ-**es who had not performed any service during 1982 would be stricken from the Roster. The **parties** apparently met yearly **to** revise seniority lists.

Section 8, Article 8.1 of Appendix "G" provides:

"The following rules contained in the main Collective Agreement governing . . . forces in the State of Maine and Vermont are applicable to Extra Gang **Labourers.**"

Rule 11 is **not** one of the Rules identified in Section 8, Article 8.1.

During handling on the property the Regional Engineer wrote General Chairman Valence on August 3, 1984, stating:

"MSW Peck's record shows that he had not performed any service . . . in 1982 and, as such, his name was **taken off the** seniority list of extra **gang employes when the seniority** lists were revised for year 1983. This was **in** accordance with Article 11.5 of the Collective Agreement for the States of Vermont and Maine. This was done with your concurrence during the 1983 **seniority** list meeting, which you attended with the Division officers."

Valence responded **Claimant's** name did appear on the 1983 list. In October, 1984, Carrier's General Manager responded, enclosing a copy of the 1982 Seniority Roster for Extra Gang Laborers. Claimant's name, as well as that of several **others, is** lined out.

On May 9, 1985, General **Chairman** Thiessen wrote General Manager Swanson pointing out Article 11.5 was not applicable, quoting Section 8.1 of Appendix G.

On June 3, 1985, Swanson wrote Thiessen repeating Claimant's name had been removed by agreement with Valence but remained on the list **through** oversight and was later removed. In this same letter Swanson agreed Rule 11.5 did not apply and apologized for any inconvenience caused. He stated new procedures have been adopted to avoid recurrences. He also offered **to** include Claimant on the seniority list **with** a May 12, 1980, date on **the** condition that all outstanding claims be dropped. The Organization refused on June 11, 1985.

Clearly this **situation** arose from a good faith mutual mistake. From the **inception** of the Claim until May, 1985, apparently **neither** party realized Article 11.5 was not applicable. When the mistake was realized Carrier apologized, but its **response** was otherwise inadequate. We will require that Claimant be reinstated to his seniority date of May 12, 1980, and be **compensated** for any losses he suffered after the error was recognized on June 3, 1985.

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

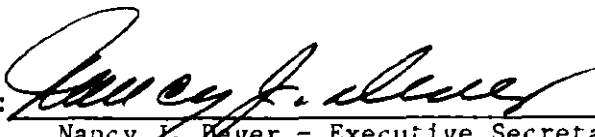
That **the** Agreement was violated.

A W A R D

Claim **sustained** in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, **this** 25th day of June 1987.