

NATIONAL RAILROAD ADJUSTMENT BOARD
Third Division

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
UNION PACIFIC RAILROAD COMPANY—NORTHWESTERN DISTRICT

DISPUTE.—

"Claim of Gustof Mortier, Section Laborer, LaGrande, Oregon, for reimbursement of pay for time lost incident to alleged failure to recall him to service in accordance with his seniority rights during the period he was off on account of reduction in force, October 1, 1931, to August 9, 1935."

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

The carrier and the employee involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute waived right of appearance at hearing thereon. An agreement bearing date of March 1, 1922, was in effect between the parties.

The rules cited are:

"ARTICLE 2, SECTION 1

"Seniority begins at the time the employee's pay starts.

"ARTICLE 2, SECTION 2

"Rights accruing to employees under their seniority entitles them to consideration for positions in accordance with their relative length of service with the Company, as hereinafter provided.

"ARTICLE 2, SECTION 3

"Seniority rights of all employees are confined to the sub-department in which employed.

"ARTICLE 2, SECTION 4

"Except as provided in Section 5 of this Article, and in Section 8 of Article 3, when force is reduced, the senior men, in the sub-department, on the seniority district, capable of doing the work, shall be retained."

Article 3, Section 8, referred to above, pertains to crossing watchmen, and is not here involved.

Article 2, Section 5, referred to in Section 4 provides that:

"Seniority rights of laborers, as such, will be restricted to their respective gangs, except that when force is reduced, laborers (not including extra gang laborers), affected may displace laborers junior in service on their seniority district."

"ARTICLE 2, SECTION 6

"Seniority rights of laborers to promotion will be restricted to the territory under the jurisdiction of only one supervisor or roadmaster."

The circumstances are—

Gustof Mortier entered service as section laborer LaGrande July 15, 1918, and resigned April 14, 1919. He reentered service as section laborer LaGrande

April 14, 1925, and was in continuous service on the LaGrande section, No. 233, until October 1, 1931, when he was laid off account reduction in force. On July 5, 1932, he was accorded in accordance with his seniority rights, position of section laborer on Section 242 Minam, Oregon, and held this position until November 1, 1932, when this section was abolished.

The Third Division finds from the record that—

In accordance with Article 2, Section 1, above quoted, Gustof Mortier was accorded on the seniority roster of the roadmaster's district on which the LaGrande section is located, a seniority date of April 14, 1925. When the number of section laborers on the LaGrande section was reduced on October 1, 1931, Mortier in accordance with Article 2, Section 5, was laid off with other junior men involved. Under Article 2, Section 5, above quoted, the section laborers on the LaGrande and other sections affected by the reduction, were entitled to displace laborers junior in service on the roadmaster's district.

When section laborers displaced laborers junior in service on their seniority district in accordance with the above rule of the agreement then in effect, they established gang rights on the section on which they were assigned, and surrendered gang rights on the section on which formerly employed. In other words, a section laborer holds seniority on the seniority roster of the roadmaster's district, but under the agreement effective March 1, 1922, and in effect at the time this claim was made, he held gang rights only on the gang on which employed from time to time. Accordingly, when Gustof Mortier took position of section laborer at Minam, Section 242, which is located on the same roadmaster's district as the LaGrande section, he acquired gang rights on that section and forfeited his gang rights on the LaGrande section No. 233.

Article 2, Section 5, provides that section laborers laid off account reduction in force may displace laborers junior in the service on the roadmaster's district. The word "may" was used in the rule for the express purpose of affording employees the right of election, but only in connection with reduction in force. Section 242 Minam, was abolished in its entirety on November 1, 1932, and where sections are abolished, section laborers in order to retain their seniority must exercise it or be dropped from the service. During the depression period exceptions were made to enable employees in connection with the general unemployment situation to avail themselves of other employment, but under strict application of the agreement an employee failing to exercise seniority following the abolition of a section forfeited his seniority unless protected by leave of absence. Mortier did not elect or undertake to exercise his seniority elsewhere on the roadmaster's district, in fact he specifically declined positions outside of LaGrande. He did not have any rights under the agreement or otherwise on the LaGrande section after he transferred to the Minam section, and was eligible for a position on the LaGrande section only to the extent of a new position or vacancy not filled by a senior employee on the roster of the roadmaster's district. There was no junior employee working on the LaGrande section when the Minam section was abolished.

It was not until December 29, 1934, that Mortier appeared to manifest any interest in this extra labor or extra track work. Under the circumstances, the section foreman and roadmaster accorded the work to employees who were interested in it, and upon whom they could rely to respond. In his letter to the roadmaster dated December 29, 1934, Mortier requested advice as to why he was not called to work as section laborer in accordance with his seniority, claiming that there were junior men working in the yards at LaGrande, and that he had a right to be called even for temporary work. There were not at this time, nor had there been at any time after the Minam section was abolished, or since Mortier was laid off account reduction in force in October 1931, junior men regularly employed on the LaGrande section, and in any event, Mortier under the agreement had no rights on the LaGrande section after his transfer to the Minam section. As to section laborers' work at LaGrande, Mortier had no seniority claims on work on the LaGrande section. Whatever rights he had were over junior employees on the roadmaster's district.

His attention was called to the fact that the roadmaster and roadmaster's clerk had called him on several occasions for regular position of section laborer on the roadmaster's seniority district, but he failed to respond. His attention was also called to failure to respond for temporary or extra work at LaGrande. In reply to this Mortier wrote the roadmaster January 3, 1935, admitting that he had been called by the roadmaster's clerk on two occasions, but for work out of

town which he was not in a position to accept. He also admitted that the section foreman called him for temporary work and stated that:

"I am employed on Monday, Tuesday, Wednesday, and Thursday, six hours a day. Now I can work if you need me on extra work Friday, Saturday, and Sunday, or if not too strenuous any time at night."

Mortier further stated:

"I hold my seniority here in the yards (LaGrande) and I live here, consequently I wish to keep this seniority inviolate to such time as I may again be regularly employed."

This indicated that Mortier was laboring under the erroneous assumption that he held seniority on the LaGrande section instead of on the roadmaster's district. He was not entitled to a position on the LaGrande section until a regular vacancy occurred or a new position was established, which he could hold on a basis of his seniority on the roadmaster's district.

Mortier's contention concerning his seniority status suggested to the roadmaster that he should be set straight as to his rights under the agreement, and it was decided to enforce the agreement provisions by recalling him in accordance with his seniority standing on the roadmaster's seniority district. He was thereupon given formal notice of recall to vacancy in position of section laborer at Looking Glass. In letter dated February 7, 1935, he declined this position, stating:

"If it so happens that you can give me work here at LaGrande so that I can stay at home, I can get along all right, and this is where I hold my seniority and where I desire to work."

This letter further confirmed Mortier's erroneous assumption that he held seniority rights at LaGrande, and further indicated that he was not prepared to work until a regular position was available at LaGrande.

As stated above, seniority of section laborers is held on the roadmaster's district, and Mortier did not, as he claims, hold seniority on the LaGrande section. Check made at this time showed that all of the employes holding regular positions on the LaGrande section were senior to Mortier. He was also called to respond for regular position as section laborer on Section 256 North Powder, and declined.

The regular assignments of positions of section laborers LaGrande section during the years 1933 and 1934, and up to August 1935, were as follows:

Month	1933	1934	1935	Month	1933	1934	1935
January.....	3	4	4	July.....	5	6	6
February.....	3	5	4	August.....	7	7	6
March.....	3	5	6	September.....	7	7	-----
April.....	6	5	6	October.....	7	7	-----
May.....	5	7	7	November.....	7	6	-----
June.....	5	7	6	December.....	5	6	-----

There were eleven section laborers senior to Mortier, as follows:

P. Piccolo, 3-2-13.
P. Walker, 6-2-16.
J. B. Landers, 4-29-19.
Nicolo Zangari, 12-7-19.
Nick Zangari, 12-7-19.
John Gray, 5-1-20.
Charles Prouty, 7-1-20.
Evo Mortier, 9-14-20.
E. McKeehan, 9-1-21.
S. E. Wagner, 12-29-21.
A. Baker, 2-10-25.
Gustof Mortier, 4-14-25.

Analysis of Mortier's complaint indicates that it is based on an erroneous understanding of the seniority rules of the agreement, first in his contention that he held seniority rights on the LaGrande section following the abolition

of the Minam section, and second that there was any obligation under the current agreement to call him for temporary or extra work on the LaGrande section or elsewhere. There was no provision in the agreement with reference to temporary work; the seniority rules applied to regular positions. Moreover, Mortier repeatedly declined to respond for temporary work, apparently because the outside employment in which he was engaged in connection with government relief projects afforded him employment at higher wages for at least six hours per day four days a week, and he would have been required to relinquish this if he accepted temporary work with the railroad company. In point of fact, Mortier did not show any interest in employment at LaGrande until December 29, 1934. During the period that Mortier was not in service numerous regular positions of section laborers on the roadmaster's district were available, and if he had accepted these positions he would have had practically continuous employment during the period covered by his complaint.

Reference is made in the complaint filed in Mortier's behalf to Article 2, Section 8. This section reads as follows:

"Restoration of forces.—Employees who are laid off by reason of force reduction may file their address in writing with the officer of the sub-department notifying them of the reduction. When forces are restored such employees (including laborers with less than six months' continuous service) will be given preference and reasonable effort will be made to locate and advise them."

Gustof Mortier did not file his address in accordance with this rule, but in any event there was no obligation whatever under this rule to recall furloughed employees in their seniority order for either regular or temporary work. The rule provides only that employees laid off on account of force reduction will be given preference over new employees. Rules requiring restoration of employees in seniority order so state, and carry the obligation upon employees to respond or be dropped from the service.

Gustof Mortier returned to work on the LaGrande section in August 1935, the first opportunity when there was a regular position on that section which he was entitled to hold in accordance with his seniority, on the seniority roster of the roadmaster's district.

The rules of the agreement in effect between the parties during the period of claim do not sustain the claim for time lost October 1, 1931, to August 9, 1935.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: H. A. JOHNSON
Secretary

Chicago, Illinois, this 18th day of December, 1936.