

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Frank M. Swacker, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
THE MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: "Claim of Ira Robertson and C. V. Jordan for pay for all time lost account all bridge and building forces on their seniority district (The Southern Kansas Division) of the Missouri Pacific Railroad being laid off from December 23, 1937 to January 3, 1938."

EMPLOYES' STATEMENT OF FACTS: "On December 23, 1937 all bridge and building forces on the Southern Kansas Division of the Missouri Pacific Railroad were notified by the Bridge and Building Supervisor and Bridge and Building Foreman that they were being laid off until January 3, 1938. This lay-off, caused all of these regular bridge and building men, regardless of their many years of service and seniority rights, to lose all of the regular assigned work period hours from December 23, 1937 to January 3, 1938."

POSITION OF EMPLOYES: "The employees contend that the provisions of Rule 3, Paragraph (a) of the agreement entered into between the representatives of the carrier and the representatives of the employees, and effective January 1, 1928, which provides:

'When force is reduced the senior man in the sub-department on the seniority district, capable of doing the work, shall be retained.'

were violated. Also the provisions of the same rule, Paragraph (c) which provides:

'Gangs will not be laid off for short periods when the proper reduction in expenses can be accomplished by first laying off the junior men.'

were violated, in that no effort whatever was made by the carrier to make a reduction in forces by laying off the junior men as provided for in Rule 3, Paragraph (a) which could have been done, and which would have accomplished the same purpose in so far as reducing expenses were concerned, and no effort was made by the carrier to make any reduction in expenses that may have been necessary by first laying off the junior men as provided for in Rule 3, Paragraph (c) which also could have been done and which would have accomplished the same purpose in reducing expenses, and not laying off the entire gangs as was done in this case. The employees further contend that inasmuch as each supervisor and foreman are notified before—on, or shortly after the beginning of each month, the amount of money available for and allotted to each gang for the month, that there is no reason or excuse whatever for these entire gangs to be laid off as each foreman and supervisor knows when he receives notice of the allowance for the month

'Our conference developed that your "complaint had no reference to rules of our wage agreement dated January 1, 1928, but involved the question of adherence to Rule 209 of rules and instructions for the Maintenance of Way Department Employees reading:

"Absence from work—they must remain with their men and personally supervise and engage in all work of the gang, and must never absent themselves from duty without permission from their superior."

'The wording of this rule is clear and understandable and in our opinion such interpretation requested in your letter 10th instant would be superfluous and lead to ambiguities.

'I might add that both our discussion and your letter 10th instant deals in generalities, and if there be specific instances for complaint as to the application of either the schedule rules or Rule 209 of rules and instructions of the Maintenance of Way Department Employees, such complaints, when presented, will be given appropriate consideration.'

"As will be noted from the above exchange of letters, Mr. Hudson in his letter of December 10th made specific reference to our established practices of laying men off for short periods under Rule 3-(c) of our wage agreement. Our reply of December 11, 1937 specifically answers General Chairman Hudson's remarks with respect to the application of the aforesaid rule, viz:

'We feel the rules of our wage agreement dated January 1, 1928 amply provide for the manner of handling "force reductions"; that these rules are clear and understandable and the follow-up will be such as to bring about practical and uniform applications.'

"There can be no misunderstanding as between the employees and the carrier on this subject. The employees stated that they had received considerable number of complaints with respect to application of the force reduction rule. The matter was discussed in conference following which the employees were advised that the rules of our agreement amply provide for the manner of handling force reductions; that these rules are clear and understandable and that the 'follow-up' will be such as to bring about practical and uniform application, that is, uniform application of the rules on the eighteen divisions on the Missouri Pacific Railroad. This 'follow-up' was given appropriate handling by the carrier in keeping with its statement to the employees, and so far as we are aware the rules are now being uniformly applied on all of the eighteen divisions of the Missouri Pacific Railroad."

OPINION OF BOARD: This case involves the construction of Rule 3, paragraphs (a) and (c) of the Agreement between the parties relating to reduction in forces. The manifest object of the rule is to provide that, when reductions are necessary, such work as remains will be accorded in conformity with strict seniority as opposed to the work being shared by all alike. It is clear that the necessary effect of the practice here followed, that is, a general lay-off in order to reduce forces, is to share among all employees such work as there is during a given period rather than accord it to the senior employees. The effect of the practice in the instant case was that the whole four B. & B. gangs were worked the first twenty-three days of the month, men with only a few months' seniority obtaining the same amount of work as men with twenty years and more. This is certainly directly contrary to the intention of the rule unless unavoidable.

The Carrier contends that in the application of the rule, it has reduced forces by laying off junior men to the point where it has brought gangs down to the minimum number of members capable of operating safely and economically; it does not, however, say when this occurred, that is, gradually over a period of years or lately before the general lay-off; but assuming it

to be a fact that throughout the month of December the gangs were operated with a minimum consist and that brought about by previous lay-off of junior men, the Organization contends, nevertheless, that there was no reason why one gang should not have been dispensed with altogether during the month of December and its personnel allowed to place themselves as their seniority would entitle them in the three remaining gangs, there displacing junior men who instead were allowed to work the full time any of the forces were worked.

Neither of the parties has adduced sufficient detailed proof to enable the Board to determine as a fact whether it would have been possible to do as the Organization suggests could have been done but, since the nature of the rule for gang lay-off is permissive, it would appear that the burden of proof was on the Carrier to show if this was not feasible. Much the same situation was involved in Awards 372 and 492 and it will be necessary to remand this case for further development of the facts in this regard and if possible disposition of it in line with the principles above mentioned. If the parties are unable to agree on the application of the principles to the facts, the matter may be returned to the Board with such additional facts.

It is observed that some of the employees here involved were employed on a monthly basis and claim was made on argument that Rule 23 was violated as well in their case; since, however, that question was not handled with the Management, it is not disposed of herein.

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 case is remanded for disposition in conformity with Opinion with leave to return on inability to agree.

AWARD

Case remanded.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 18th day of November, 1938.