

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Grady Lewis, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS

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

(1) That the Carrier violated agreement in effect by, on August 25, 1945, substituting or assigning Assistant Roadmaster R. D. Jones to be in charge of work train labor gang, thus displacing regularly assigned Extra Gang Foreman E. D. Mirick;

(2) That E. D. Mirick shall be restored to the position of extra gang work train foreman;

(3) That E. D. Mirick shall be paid the difference between what he received in other occupations and that which he should have received as extra gang foreman, retroactive to August 25, 1945.

EMPLOYES' STATEMENT OF FACTS: The claimant, E. D. Mirick, was regularly assigned as section foreman at Lorena, Texas. In the early part of 1945 the Carrier posted bulletin advertising position of extra gang foreman. E. D. Mirick bid for and was assigned to that position. As extra gang foreman he was assigned in charge of a group of laborers unloading material from a work train. Mirick worked in that position of extra gang foreman until August 25, 1945, when he was removed from that position, returned to his section at Lorena, and Assistant Roadmaster R. D. Jones assigned in the place of Mirick to supervise work of the laborers unloading material from the work train.

Agreement effective July 1, 1945 between the Carrier and the Brotherhood is by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: Article 1, SCOPE, and Article 3, Rule 28, of agreement in effect between the Carrier and the Brotherhood of Maintenance of Way Employees, read:

"ARTICLE 1. SCOPE.

Rule 1. These rules, in their entirety, constitute an agreement between the Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas and the Brotherhood of Maintenance of Way Employees, representing the employees in the Maintenance of Way Department, namely:

OPINION OF BOARD: Claimant, and three other track foremen, were, in May 1945 assigned as foremen in charge of extra gangs to be used in a rail laying program between Hewitt and Granger. Mr. Mirick was placed in charge of an extra gang being used on a work train.

On August 25, 1945, the work done by this extra gang was taken over by the regular section gangs, and the extra gang was discontinued.

While there is no documentary evidence in the record supporting Carrier's assertion that the section gang that relieved the extra gang was in charge of an assistant foreman until October 18, 1945, there are distribution sheets for October and November in the record which show the gang to be in charge of a foreman. This proof refutes the assertion by Claimant that he was displaced by an assistant Roadmaster.

We are unable to find any provision of the Agreement that defines loading and unloading track materials from and to a work train as being work belonging exclusively to any group or class of workmen.

Both parties agree that the work train was pulled off in November, 1945. The claim for restoration to the position of extra gang foreman on the work train is, therefore, moot.

We, accordingly, find no support in the record for any of the three items of the claim.

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 there was no violation of the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 26th day of June, 1947.