

Award No. 3702

Docket No. MW-3663

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Joseph L. Miller, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

DENVER & RIO GRANDE WESTERN RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the thirty-nine section laborers, Salt Lake Division, who were temporarily laid off, or held out of service, on May 25, 1946, on account of strike by other classes of employees, shall each be paid for eight (8) hours on that day at their regular rate of pay, and that the two section laborers, Salt Lake Division, who were temporarily laid off, or held out of service, on May 25 and 27, 1946, on account of strike by other classes of employees, shall each be paid eight (8) hours on each of the two days at their regular rate of pay.

EMPLOYEES' STATEMENT OF FACTS: Just prior to quitting time May 24, 1946, the foremen on various branch line sections, Salt Lake Division, were instructed verbally by their superior officers to lay off or furlough their entire gangs effective the following day, May 25, and that such lay-off or furlough would remain in effect until such time as they were instructed to call section laborers back to work. By reason of those instructions, thirty-nine (39) section laborers were held out of service 8 hours on May 25, and 2 section laborers were held out of service for 8 hours on May 25 and 27, 1946.

There were working on the Salt Lake Division at this time approximately 130 section laborers and approximately 100 extra gang laborers.

Agreement in effect between the parties is by reference made a part of this Statement of Facts.

POSITION OF EMPLOYEES: Rule 3 (a) of the current agreement provides as follows:

"RULE 3.

EXERCISE OF SENIORITY (a) Seniority rights of laborers, as such, will be restricted to their respective gangs, except that when force is reduced, laborers affected may displace laborers junior in service on their seniority district. An employee who has elected to exercise his seniority rights in another gang may return to his former gang when force is again increased provided he does so within ten (10) days following notice of such increase. Seniority rights of laborers to promotion will be confined to the jurisdiction of only one roadmaster or other corresponding officer."

Rule 3 (e) of the current agreement provides as follows:

"RULE 3.

(e) When forces are reduced the senior qualified employees in each classification in each sub-department shall be retained."

Rule 3 (g) of the current agreement provides as follows:

Name	Location	Hours Claimed
G. O. Retter		8
A. P. Deamarais	Sevier	8
Miglid Sabala	Park City	8
W. G. Street	Park City	8
H. F. Williams	Park City	8
E. L. Jones	Park City	8
R. E. Richardson	Park City	8

and the following additional facts are furnished for the information of the Board:

Laborer C. J. Sudweeks, Manti, Utah, No. 2 on the above list, resigned September 14, 1946. F. M. Bailey, Manti, Utah, No. 4 on the list, resigned October 27, 1946. V. A. Prince, Payson, Utah, No. 14 on the list, resigned January 11, 1947. F. W. Shepherd, Payson, Utah, No. 15 on the list, resigned August 17, 1946. G. O. Retter, No. 35 on the list, is not an employee of this company. Carrier has no personal record file on this individual, and his name does not appear on the payrolls. R. E. Richardson, Park City, Utah, No. 41 on the list, resigned June 10, 1946.

F. W. Shepherd, Payson, Utah, No. 15 on the list, was employed March 6, 1946. J. D. Dixon, Payson, Utah, No. 16 on the list, was employed April 9, 1946. Dwayne Harding, Salina, Utah, No. 19 on the list, was employed April 6, 1946. O. L. Hendrix, Salina, Utah, No. 20 on the list, was employed April 10, 1946. E. L. Jones, Park City, Utah, No. 40 on the list, was employed March 27, 1946. These five laborers, under the provisions of Rule 5 (b) reading:

"Seniority rosters will show the name and date of entry of employees into the service of the railroad and date of promotion, as well as their location at the same time roster is compiled, except that names of laborers will not be included and their seniority rights will not apply until they have performed service the majority of the working days in each of three (3) consecutive months."

having been employed, as of May 25, 1946, less than three months had not established a seniority date, and, therefore, had no displacement rights as contemplated by Rule 3 (a).

V. A. Prince and F. W. Shepherd, Payson, Utah, Nos. 14 and 15 on the list, (both of whom have resigned) also claim a day's pay for May 27, 1946. The foreman of the Payson gang, as well as the foremen of the nine other gangs involved, was notified by telegram filed at 2:35 P.M. May 25, 1946, to return his men to service Monday morning, May 27, 1946. While he did properly notify other members of his gang, he was unable to locate these two laborers.

The fact that 39 out of 41 men were contacted and were restored to service May 27, 1946, is ample evidence that Carrier's foremen did make proper effort to contact all laborers involved, and certainly claim for that date has no merit.

OPINION OF BOARD: All the background of the 1946 railroad strike which we gave in our Opinion in Award 3701 is applicable to the matter before us here. We will not repeat it.

In this case, the Carrier on May 24 notified the Maintenance of Way foremen on various branch lines of the Salt Lake division to lay off their gangs at the close of that working day. Over the week end they were called back to work Monday (May 27).

The Organization claims violation of Rule 3 (a), (e) and (g). We can find no violation of Section (a). Section (a) provides an opportunity for exercise of seniority by members of gangs laid off in force reductions. There was insufficient time in the instant case for those laid off to exercise their seniority, before they were put back to work. Sections (e) and (g) should be read together in this matter.

They say: "(e) When forces are reduced the senior qualified employees in each classification in each sub-department shall be retained," and "(g) Gangs will not be laid off for short periods when proper reduction of expenses can be accomplished by first laying off the junior employees."

Certainly the intent of these sections, read together, is to prevent precipitate lay-offs of entire gangs. Conversely, they call for the Carrier to plan gang work so that the older employees at least can expect the maximum possible continuous employment.

As we said in our Opinion in Award 3701, the Carrier could have had no reasonable expectation that the strike would continue more than a short time. That there was work for the Maintenance of Way gangs to do was evidenced by the fact that they were recalled as soon as the strike ended.

Setting these conclusions beside the intent of Rule 3 (e) and (g), we find that the Carrier violated the Agreement to the extent herein explained.

As to the individual claims:

We believe that the Carrier made a reasonable effort to locate Prince and Shepherd; we will disallow their claims for May 27.

The Organization during this proceeding withdrew the claim in behalf of Retter.

The Organization and the Carrier should jointly check the employment dates for Shepherd, Dixon, Harding, Hendrix and Jones. If they had no seniority rights as of May 24, the claims in their behalf are disallowed.

All the other claims will be allowed.

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 Carrier violated the Agreement to the extent indicated in the Opinion.

AWARD

Claims sustained to the extent indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 5th day of November, 1947.