Award No. 4554
Docket No. MW-4532

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Adolph E. Wenke, 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 the agreement by allowing Section Laborer D. R. Bigelow, Section 276, Savanna, Oklahoma to be displaced from his position at Savanna during the period from October 10 to October 31, 1947 inclusive;

(2) That Section Laborer D. R. Bigelow be reimbursed for all monetary less suffered by him because of the Carrier's violation of the agreement in accordance with the provisions of Article 23, Rule 2.

EMPLOYES' STATEMENT OF FACTS: Under date of October 2, 1947 Section Foreman R. L. Owens erroneously displaced Foreman Douglas Ferguson at Savanna, Oklahoma. As a result Foreman Ferguson, assuming he was the junior foreman on his district, was thus forced to go to the next lower classification in which it was possible for him to hold a job. Ferguson, therefore, displaced D. R. Bigelow as section laborer on Section No. 276 at Savanna, Oklahoma.

We quote below a letter from District Engineer L. R. Deavers dated November 29, 1947, addressed to General Chairman E. Jones:

"Muskogee, Oklahoma
November 29, 1947
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Mr. E. Jones, General Chairman,
Brotherhood Maintenance of Way Employes,
202 Security Building,
Denison, Texas.

Dear Sir:

Your letter of November 15, 1947, file R-Southern.

I have reviewed the case wherein Mr. Douglas Ferguson was displaced as Section Foreman at Savanna, Oklahoma, on October

does not concede but expressly denies, no specific agreement violation has been alleged and shown by the Petitioner to have occurred in this instance, and it is, therefore, clearly and unmistakably evident, as contended and shown by the Carrier in this submission, that Mr. Bigelow was not displaced from his position as laborer on Section 276, Savanna, Oklahoma, in violation of the agreement, but that he was displaced therefrom in accordance with the provisions of the agreement. The claim is, therefore, not supported by any agreement provisions, as evidenced by Petitioner's failure to cite and show any specific agreement provision that was violated by Mr. Ferguson displacing Mr. Bigelow as laborer on Section 276, Savanna, Oklahoma, October 9, 1947. The claim should, therefore, be denied in its entirety.

The Carrier respectfully requests that the Board deny the claim.

Except as expressly admitted herein, the Carrier denies each and every, all and singular, the allegations of Petitioner's claim, original submission and any and all subscquent pleadings.

(Exhibits not reproduced.)

OPINION OF BOARD: The System Committee contends that Carrier violated their agreement when it allowed claimant, Section Laborer Delmer R. Bigelow, Section 276, Savanna, Oklahoma, to be displaced and asks that he be compensated for all monetary loss suffered by reason thereof during the period from October 10 to October 31, 1947, inclusive.

The record discloses that on October 3, 1947, Carrier permitted Section Foreman R. L. Owens to improperly displace Section Foreman Douglas Ferguson at Savanna, Oklahoma. Ferguson thereupon took a six day vacation and then, on October 9, 1947, displaced claimant as a section laborer on Section No. 276 at Savanna, Oklahoma. Ferguson continued as a Section Laborer up to and including October 31, 1947. Thereafter claimant returned to his work. On December 12, 1947, claimant made this claim for the period he was displaced as a section laborer based on the fact that he had been displaced by Ferguson whom Carrier had permitted Owen to improperly displace as a Section Foreman.

The first question that arises is whether or not the claim is based because not made within the time as limited by Article 23, Rule 2, of the parties' effective Agreement. This rule provides:

> "Claims of employes which may arise under this agreement shall not be subject to monetary recovery unless presented within sixty days from the date of events or circumstances on which the claim is based."

It will be noted that the rule does not relate the time within which the claim must be made to when the party affected by such events or circumstances becomes aware of any rights he may have by reason thereof but to the date thereof. The dates of the events or circumstances out of which this claim arises are the improper displacement of Ferguson as Section Foreman on October 3, 1947, and Ferguson's subsequent displacement of claimant on October 9, 1947. The claim being for a monetary recovery and having been made more than sixty days subsequent to October 9, 1947, it is barred by the provisions of the foregoing rule.

Nor would the claim be good for the days claimant was displaced by Ferguson that are within sixty days of December 12, 1947, when the claim was made, for, by the express provisions of Article 23, Rule 2, the limitation relates itself to the date of the events or circumstances on which the claim is based, which in this case was not later than October 9, 1947, and consequently all monetary claims resulting therefrom but based thereon had to be made within the time so limited.

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

That both parties to this dispute waived oral hearing thereon;

That the Carrier and the Employe involved in this dispute are respectively Carrier and Employe 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 acted within the rules of the Agreement in denying the claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 12th day of September, 1949.