

Award No. 5812

Docket No. MW-5522

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

WABASH RAILROAD COMPANY

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

(1) That the Carrier violated the effective agreement when they assigned Extra Gang Foreman R. D. Nickles and his Crew during overtime hours on April 5 and 6, 1950, to make repairs to track damaged by derailment, and failed to call Section Foreman Charles Gamache and Section Laborers Sam Incardone, Sam Disarbo, Tony Palmeri and James White;

(2) That the above named employees be paid at their respective overtime rates for an equal proportionate share of the man-hours consumed by the Extra Gang employees assigned to the performance of the above referred to work.

EMPLOYEES' STATEMENT OF FACTS: Section Foreman Charles Gamache, and Section Laborers Sam Incardone, Sam Disarbo, Tony Palmeri and James White, are members of Section Gang No. 2.

At about 9:00 P.M. on April 5, 1950, the engine and two (2) cars of Train Extra North, Engine 2918 were derailed while pulling in on Track No. 7, in what is known as the "Coal Field", in Landers Yard, Chicago Terminal Division.

All available employees of Section Gang 2½, on whose territory the derailment occurred, employees of Section Gang 1½ and some employees of an Extra Gang, who were quartered in outfit cars near the scene of the accident, were used to assist in clearing up the derailment during regular assigned hours and during overtime hours on April 5, 6 and 7, 1950.

Foreman Gamache and his crew were used on Section 2½ during their regular assigned hours on April 7, only.

A claim was filed in behalf of Section Foreman Gamache, and Laborers Incardone, Disarbo, Palmeri and White for compensation at their respective overtime rates for an equal proportionate share of the overtime man-hours consumed by the members of the Extra Gang.

Claim was declined.

Your attention is likewise directed to the General Chairman's letter of August 28, 1950, appealing the alleged claim to the Vice President—Operations, copy of which is attached hereto and made a part hereof (marked Carrier's Exhibit "P").

Inasmuch as Item No. 2 of the Committee's ex parte Statement of Claim has not been presented to, or handled with, the representatives of the Carrier on the property, same is not properly before or subject to a decision by this Board and should be dismissed.

SUBJECT TO AND WITHOUT WAIVING THE FOREGOING EXCEPTION, THE CARRIER MAKES THE FOLLOWING STATEMENT ON THE MERITS:

It is the position of the Carrier that the alleged claim, set up in the Committee's ex parte Statement of Claim, is without basis under the rules of the Agreement between the Wabash Railroad Company and its employees in the Maintenance of Way Department on Lines West of and including Detroit and Toledo, represented by the Brotherhood of Maintenance of Way Employees, effective June 1, 1940, as amended.

Rule 2, paragraph (c), of that Agreement reads as follows:

"(c) Seniority rights of section and extra gang laborers as such will be restricted to their respective gangs, except in case of force reduction, seniority rights of such employees will extend over the territory under the jurisdiction of one track supervisor, and in case of promotion will extend over the territory under the jurisdiction of one division superintendent."

The derailment occurred on Section No. 2½. The seniority rights of the claimants are restricted to Section No. 2, except in case of force reduction or in case of promotion, by the above quoted rule. It is, therefore, obvious that the Carrier was not required, under the rules of the existing Agreement, to use the claimants on Section No. 2½ on the dates, and under the circumstances, involved.

The Committee's action in submitting the claim, set up in the Committee's ex parte Statement of Claim, to the National Railroad Adjustment Board, Third Division, is obviously an attempt to obtain a new rule enlarging and extending the seniority rights provided by the rules of the existing Agreement. This Board is without authority to grant rules or to revise existing agreements, and the contentions of the Committee must be dismissed and the claim denied.

All data, submitted in support of the Carrier's position in connection with this dispute, has been presented to the Committee.

(Exhibits not reproduced).

OPINION OF BOARD: On April 5, 1950, at about 9:00 P. M., an engine and two cars were derailed in Landers Yard, Chicago Terminal Division, within the territory of Section Gang 2½. All available employees of Section Gang 2½, employees of Section Gang 1½, and some employees of an Extra Gang quartered in outfit cars near the scene of the accident were used to clear up the derailment on April 5, 6 and 7, 1950, during both regular and overtime hours. Claimants as members of Section Gang No. 2 were used during regular hours only on April 7, 1950. They claim compensation for their proportionate share of the overtime worked by the members of the Extra Gang.

The derailment occurred in the territory of Section Gang 2½. Section Gangs 1½ and 2 were assigned to territory adjacent to that of Section Gang 2½. The Extra Gang held seniority on the Decatur Division. The territory of Section Gangs 1½, 2 and 2½ is on the Chicago Terminal Division. The right of a Carrier to use section gangs on sections other than their own in the performance of emergency work is not questioned in this case. The qu

tion is whether a section gang must be called for such work before Extra Gang employees from another division may be used.

Rule 2 (c), current Agreement, provides in part:

"Seniority rights of section and extra gang laborers as such will be restricted to their respective gangs, except in case of force reduction, seniority rights of such employees will extend over the territory under the jurisdiction of one track supervisor, and in case of promotion will extend over the territory under the jurisdiction of one division superintendent."

Claimants as members of Section Gang were assigned 7:00 A.M. to 4:00 P.M., with one-hour lunch period. They worked their regular assignments on their own territory on April 5 and 6. On April 7, they worked their assigned hours at the scene of the derailment. No overtime hours were worked on April 7 by any employees at the scene of the derailment.

We fail to find any Agreement provision that supports the claim. The seniority rights of these Claimants except the foreman are expressly limited to their respective gangs except as to force reduction and promotion. Consequently, they have no right to work that does not arise in their assigned territory. The Organization contends, however, that as section gangs are required to aid in doing emergency work on other sections that it has the effect of vesting them with rights they did not otherwise have. The right of the Carrier to require section gangs to perform emergency work outside of their own assigned territory does not have the effect of changing the express limitation of seniority rights contained in the Agreement. It is simply a prerogative of management which the parties have not seen fit to deal with by Agreement. We are cognizant of the fact that we have applied seniority rights as between those in the same class where the Carrier assigned one or more of them work which they had no right to claim. See Awards 2341, 4841. But it must be observed that in those cases there was not, as here, a rule expressly limiting the seniority rights of the employees in such a way as to make the basic reasoning of those awards applicable. We necessarily conclude that the restrictions contained in Rule 2 (c) are effective to defeat the present claim.

The Organization contends that even though the Board finds that the Section Crew members have no valid claim because of Rule 2(c), the foreman's claim is not controlled thereby and that his claim is valid under Rule 2(b). Even if this be so, which we do not here decide, the claim as made does not warrant a consideration of this issue. There is but one claim, that of the foreman and crew and the penalty asked is that the employees named (foreman and crew) be paid an equal proportionate share of the man-hours consumed by the Extra Gang employees. The claim as made is not one on behalf of the foreman of Section Gang No. 2 for not being used in place of the foreman of Extra Gang No. 7. A careful examination of the record reveals that neither of the parties considered that the foreman of Section Gang No. 2 was making a claim separate and distinct from the crew. The claim of the foreman of Section Gang No. 2 as made and processed to this Board must rise or fall with that of his section crew. The claim was in the conjunctive and must be disposed of as a single 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 the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 28th day of May, 1952.