Award No. 6339
Docket No. MW-6239

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

BANGOR AND AROOSTOOK RAILROAD COMPANY

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

(1) That the Carrier violated the agreement when it refused to grant roster standing as trackmen and Trackman's rate of pay to regular trackmen who accepted positions in an Extra Gang upon the abolishment of the track gang to which they had been assigned;

(2) That all employes who have been in the Carrier's service in excess of three months, and who have performed some trackman's service on a bulletined assignment, be granted trackman's seniority retroactive to the date on which they first entered service;

(3) That all regular trackmen referred to in part (1) of this claim be allowed the difference between what they were paid at the Laborer's rate of pay and what they should have been paid at the regular Trackman's rate of pay, beginning as of the date their track-fence gang was abolished and continuing until the violation is corrected.

EMPLOYES' STATEMENT OF FACTS: A short time prior to August 23, 1951, the Carrier established a Track-Fence crew but failed to bulletin the positions of trackmen in that new gang to the laborers on Extra Gangs.

This oversight was called to the Carrier's attention by General Chairman G. L. Pettengill by letter reading as follows:

"Houlton, Maine
August 23, 1951

Mr. W. J. Strout
Chief Engineer
Houlton, Maine.

Dear Sir:-

Just recently you created a track-fence crew, I do not know if you bulletined any trick-fence men's positions or not as I did not

(b) He has the right to bid into a trackman's position or a track-fence crew.

(c) He must perform trackman's work for 3 months before he acquires rights as a trackman.

Work as a laborer does not count toward acquiring trackman's rights.

(d) After acquiring rights as a trackman he is entitled to trackman's rate of pay while working in a rail or ballast crew.

(e) Before completing three months of service as a trackman and before acquiring seniority as a trackman he is only entitled to laborer's rate of pay while working in a rail or ballast crew.

The men involved in this claim did not have the required three months of service as a trackman. They therefore were not entitled to trackman's rate of pay or seniority as trackman until they had completed the necessary three months of service as a trackman or in a track-fence crew.

The claim should therefore be declined.

All of the matter contained in the Company's submission has previously been discussed with the Organization representing the employes.

OPINION OF BOARD: The facts in this case are not disputed by the parties. On August 28, 1951, Carrier posted a Bulletin to Extra Gang Laborers giving notice of positions open for bid, on a Track-fence Crew. The Bulletin stated the wage to be paid at Trackmen's rate, with no overtime allowed, and the men working the positions to be called Trackmen. By letter of August 30, 1951, nine employes, all named in the letter, submitted joint bid for the Trackmen positions as provided in the Bulletin posted by Carrier, and that their service would begin September 6, 1951. The employes remained on the Track-Fence Crew until the positions were abolished by Carrier, and exercised their right to displace Extra Gang Laborers. Carrier has refused to compensate such employes at the Trackmen's rate of pay when they returned to the Extra Gang, and also has declined to allow them to qualify as Trackmen on the seniority roster, all in violation of Section 7 (b) of Article II of the current Agreement, as alleged.

Carrier contends the employes herein did not have three months' service as Trackmen, therefore could not acquire seniority as Trackmen, and their rate of pay on the Extra Gang would be that accorded to Laborers, while working on a rail or ballast crew, and relies on Article II, Section 7 (b). The sole question to be determined by the Board is whether or not under the Agreement employes must perform work as Trackmen for a period of three months, to qualify for Trackmen position and rate of pay, as contended by the Carrier.

Some question has been raised by Carrier that identity of proper Claimants is indefinite, and that the Organization makes claim for all employes as described in paragraph 2, and all regular Trackmen as described in paragraph 3 of the claim. It is our opinion claim as presented should be limited to the nine employs named as those bidding on the positions set out in the Bulletin Carrier posted. All other claims if any, should be dismissed as being too vague, indefinite and uncertain, and as being too general in nature and applying to all employes in the Carrier's service.

We are called upon for an interpretation of Article II, Section 7 (b) of the Agreement effective December 7, 1950, and the effect of the Memorandum Agreement of December 8, 1950. Article II, Section 7 (b) states:

"Seniority roster will show the name and last date of entry of the employes into the Maintenance of Way Department and date

of promotions, except that the name of trackmen will not be included and their seniority rights will not apply except in their gangs until they have been **in service of the railroad** in excess of three (3) months when their name shall appear on the roster as of the date the employe first entered service." (Emphasis added).

The Memorandum Agreement, effective December 8, 1950, second from last paragraph provides:

"It is further understood and agreed that furloughed employes in the Maintenance of Way Department who request such work and **who are employed as laborers in ballast and track laying crews will be paid the standard trackmen's rate and will work under the provisions of the new agreement effective December 7, 1950.**" (Emphasis added).

Certainly by a reading of the above-quoted Article II, Section 7 (b), it is plainly evident the section is not ambiguous, but on the contrary is clear and definite, that it means employes in the service of the Company for three months. Nowhere does the Section as stated make any exception, nor does it state employes shall be employed as Trackmen for a period of three months to obtain rights under the Agreement as Trackmen. As the section referred to can mean only service in the Company's employ for three (3) months, and being void of any restriction as contended by the Carrier, we must hold the Carrier has violated the Agreement by its refusal to compensate the employes for Trackmen rate of pay. We are not authorized to change or write into an agreement the contention Carrier has made. Such change can only be made by negotiation between the parties. It could have easily been written into the Agreement at the time of negotiation that employes could not qualify as Trackmen until such time as they had completed work as Trackmen, but such is not the case before us. The Agreement before us simply states: "All employes who have been in the Carrier's service in excess of three months."

The Memorandum Agreement of December 8, 1950, provides furloughed employes employed as Laborers in ballast and track laying crews will be paid the standard Trackmen's rate and will work under the provisions of the Agreement effective December 7, 1950.

The Bulletin under which the Extra Gang Laborers bid in the position with the Track-Fence Crew, states the men in the Crew are Trackmen. They were paid a Trackmen's rate while on the Track-Fence Crew, and certainly under provisions of the Memorandum Agreement, when they returned to the Extra Gang, and performed work in ballast and track laying crews they are entitled to the pay at Trackmen's rate. We are, therefore, of the opinion Carrier has not complied with the provision of the Memorandum Agreement for reasons stated.

It is the Opinion of the Board that the nine (9) employes, named as accepting service as trackmen are entitled to a sustaining award, all other claims, if any, should be dismissed.

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 Employes involved in this dispute are respectively Carrier and Employes 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 Carrier has violated the Agreement as alleged.

AWARD

Claims sustained in accordance with the foregoing Opinion of the Board.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 18th day of September, 1953.