Award No. 6391
Docket No. MW-6185

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Frank Elkouri, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

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

(1) That the Carrier violated the agreement when it unilaterally abolished established sections and thereafter assigned the work of the abolished sections to employes of newly created mobile maintenance gangs;

(2) That the Carrier be required to restore the work comprehended in the duties of regular section crews to employes assigned to regular sections.

EMPLOYES' STATEMENT OF FACTS: Prior to August 1, 1949, Roadway and Track maintenance work was assigned to employes of section gangs, each of which was assigned a specific territory to maintain.

Each section crew was assigned a regular headquarters point at which their daily tour of duty would start and end.

Effective August 1, 1949, numerous track sections were abolished and the employes of the remaining section crews were advised that their duties would thereafter be confined to inspection and the making of minor repairs.

All other maintenance work which was formerly performed by the regular section crews was assigned to employes of newly created mobile maintenance gangs, whose work extends over the entire territory assigned to one or more Roadmasters.

We attach as Employes' Exhibit "A", a list identifying the sections which were abolished on each of the respective divisions. It will be further noted that the number of mobile maintenance gangs which were established on each division in lieu of the abolished sections, is listed for each division.

The headquarters point of the majority of the newly created mobile maintenance gangs was designated as mobile outfit cars which are moved from station to station depending upon the location at which the work was to be performed. The class of work to which they have been assigned is of a type and character heretofore performed by regular section crews but to all intents and purposes, the work performed by employes assigned to these so-called

foreman rate is to be used. This is the minimum division rate. It has also been decided that the bulletin should show under 'Headquarters' the point selected and, in addition, the phrase 'or camp cars when furnished'. As example:

'Headquarters

Lincoln, Neb., or camp
cars when furnished.'

As stated, discussion with the Division Chairman will be helpful in putting the plan as to the section foremen in effect.

Please be governed accordingly.

/s/ G. E. Mallery

cc-Messrs. F. W. Thompson
B. Bristow
C. L. Franklin
R. Lumpkin
R. B. Smith
R. E. Johnson
B. R. Dew
R. W. Lucas
H. G. Dennis
J. W. Shurtleff"

After the plan was inaugurated, some complaints were received from the Organization about the placement of employes. (See Exhibit "A"). In an attempt to correct any misunderstandings, the Carrier upon receipt of the Organization's letter of August 22, 1949 (Carrier's Exhibit "A") immediately instructed the Superintendents to hold meetings with the Division Chairmen of the Organization in order to correct any misunderstandings. (See Carrier's Exhibit "B"). This was done and satisfactory disposition made thereof.

This indicates that although the Organization declined to enter into any written agreement concerning the subject matter, they, nevertheless, did enter into discussions and meetings as to the mechanics to be followed in putting the plan into effect.

It is our position that the changes made in the organization of the maintenance gangs were in accord with the effective Agreement and the Carrier's duty to operate its property in an economical and efficient manner.

Inasmuch as there has been no violation of the Agreement, the Carrier respectfully petitions the Board to deny the claim.

(Exhibits not reproduced)

OPINION OF BOARD: The Record in this case is in a rather severe state of confusion, but the essence of the Employes' complaint seems to lie in their allegation that the Carrier unilaterally made changes in working conditions in violation of the Railway Labor Act and Rule 46 of the parties' collective agreement. The Employes now ask that the situation existing prior to the alleged change in working conditions be restored.

Insofar as the alleged failure to negotiate as violation of the Railway Labor Act is concerned, it suffices to say that, as this Board stated in its recent First Division Award 15970, the sections of the Act which deal with disputes involving changes in rates of pay, rules or working conditio-

administered by the National Mediation Board (violation of the sections being made a misdemeanor by the Act) and not by the National Railroad Adjustment Board, whose jurisdiction is limited by Section 3 of the Act to disputes growing out of grievances or growing out of the interpretation or application of the agreement.

Rule 46 of the applicable agreement provides that the rules enumerated in the agreement shall constitute in their entirety the agreement between the parties and that "No departure from them shall be made by any of the parties" except after giving a certain specified notice. Insofar as this Rule is concerned it suffices to say that even assuming, without affirming, that the wording or intent of a rule of a collective agreement is such as otherwise to have that affect, the parties to the agreement cannot by a rule therein expand the jurisdiction of this Board beyond the limits of the jurisdiction given to it by the Railway Labor Act.

The Carrier contends in effect that what it did involved no change in any rule and no change in working conditions; rather, that it simply amounted to a change in methods of operation and that there is no rule in the agreement restricting the Carrier's right to make this change in methods of operation, the Carrier's conclusion being that what it did lies within an unfettered area of management prerogatives.

It is impossible to reasonably determine from the confused Record whether what the Carrier did rose in fact to the height of a change in working conditions, or whether it merely constituted a change in methods of operation as contended by the Carrier. The dividing line between a change in working conditions and a change in methods of operation is often vague and difficult to determine. If employes believe that a given change constitutes a unilateral change in working conditions in violation of the Railway Labor Act they may, as has been noted, submit the matter to a tribunal which under the Act has jurisdiction to consider the dispute on such a basis.

Insofar as this Board is concerned, however, it is not always essential to determine whether a change rises to the height of a change in working conditions or whether it is merely a change in methods of operation, for even a change in methods of operation may give rise to a legitimate grievance or grievances within the jurisdiction of this Board, unless the change and the Carrier's method of putting it into effect have been agreed to by the employes' representative, if (1) the change is clearly prohibited by some rule of the agreement, or (2) if the Carrier's method of putting the change into effect trespasses upon seniority or other contractual rights of specific employes. In other words, either a unilateral change in working conditions or such a change in methods of operation may give rise to legitimate grievances on the part of specifically identified employes. But any employe allegedly injured must be specifically identified and it must be shown just how this employe's contractual rights have been invaded, for a given change may invade contractual rights of only some, all, or none of the employes covered by the applicable agreement.

Thus, the Employes have a burden in coming before this Board of showing either some rule of the agreement clearly prohibiting the change made by the Carrier or of showing by specifically identifying injured individuals that the Carrier's method of putting a change not specifically prohibited by the agreement into effect trespassed upon the seniority or other contractual rights of the employes so identified. In the instant case there appears to be no rule in the agreement specifically prohibiting the change made by the Carrier. Moreover, the Employes have not identified any individual claimants and have made no monetary claim; they have not in this Docket established the alleged adverse effect of the change on any identified employe.

In view of the above considerations this case must be dismissed without prejudice.

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 the claim should be dismissed without prejudice in accordance with Opinion.

AWARD

Claim dismissed without prejudice.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 29th day of October, 1953.