

Award No. 6462
Docket No. MW-6215

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward M. Sharpe, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
CHICAGO GREAT WESTERN RAILWAY COMPANY

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

(1) That the Carrier violated the agreement when it employed Section Laborer G. D. Kerley with seniority as of May 12, 1949, for twenty-three (23) working days during May and June, 1951, in lieu of Bennett Soffebrotten, who holds seniority as a Section Laborer as of May 9, 1949;

(2) That Section Laborer Bennett Soffebrotten be paid at his applicable straight time rate of pay for twenty-three (23) days at eight hours each account of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: Mr. Bennett Soffebrotten, with a seniority date as Section Laborer as of May 9, 1949, and Mr. G. D. Kerley, with a seniority date as Section Laborer as of May 12, 1949, both held the seniority on the Talmage section.

Prior to the dates involved in this instant claim, both Mr. Soffebrotten and Mr. Kerley held the status of furloughed employees. During the first period of May 1951, the Carrier increased the forces on the Talmage Section but in lieu of recalling the senior employee, Mr. Soffebrotten, they recalled Mr. Kerley. Mr. Kerley was employed for a period of 8 days in the first half of May 1951, 11 days in the second half of May 1951, and for 4 days in the first half of June 1951, while Mr. Soffebrotten continued on furlough.

As a result of discussions on June 6, 1951, when the Brotherhood's General Chairman, Mr. J. P. Wilson, held conference with the Division Engineer's Chief Clerk at Olewein, Iowa, Mr. Soffebrotten was recalled to service.

Claim in behalf of Mr. Soffebrotten was filed by the General Chairman under date of August 18, 1951. No reply was received from the Carrier. The General Chairman again addressed the Carrier on October 8, 1951, advising that "Due to the fact that you declined to make any reply to my above referred to letter, * * * I am this date appealing the claim * * *."

Claim was appealed to Carrier's Chief Engineer under date of October 8, 1951. Again, no reply was received and the Chief Engineer was traced on November 8, 1951. At that time the General Chairman advised that the claim was being appealed to Mr. D. K. Lawson, Personnel Officer. This appeal was

OPINION OF BOARD: Bennett Soffebrotten has a seniority as section laborer as of May 9, 1949, while S. D. Kerley has a seniority as of May 12, 1949. During the first period of May, 1951, the Carrier increased its force on the Talmage Section but in lieu of calling the senior employe, Bennett Soffebrotten, they recalled S. D. Kerley who was employed nineteen days in May and four days in June, 1951. The Scope Rule and other applicable rules in effect at the time the labor was performed by Kerley read as follows:

"Rule 1. The rules contained herein shall govern the hours of service, working conditions and rates of pay of all employes in the Maintenance of Way and Structures Department but not including:

1. Supervisory forces above the rank of Foreman.
2. Signal, telegraph, and telephone employes.
3. Clerks."

"(Seniority Datum)

Rule 2. (a) Except as otherwise provided in these rules, seniority begins at the time employe's pay starts. Seniority of seasonal extra gang laborers will not accrue or apply until they have been in continuous service of the Railroad Company for nine months."

"(Increase of Force)

Rule 12. (a) When forces are increased senior employes will be given preference for employment to positions in the groups in which they hold seniority. Employes desiring to avail themselves of this rule must file their address in writing within fifteen (15) days, with the officer notifying them of the reduction, and advise promptly of any change in address. Employes failing to return to service within seven (7) days after being notified by mail or telegram sent to the last address given, or give satisfactory reason for not doing so, will be considered out of the service."

It appears that when Bennett Soffebrotten was laid off prior to May, 1951, he filed his name, address and telephone number with one N. W. Allen who was acting as a temporary foreman for the Carrier. It also appears that Bennett Soffebrotten was available and ready to render service for the period in question.

It is the position of the Carrier that Bennett Soffebrotten did not file his address with the Roadmaster (officer notifying him of the reduction) within fifteen days of the force reduction at Talmage or at any other time prior to this dispute, under which circumstances, the Roadmaster, Des Moines, assumed he had obtained employment elsewhere either by exercising seniority rights at some other point on the Iowa Division, as provided by Rules 5 and 10 and was not interested in employment on the Talmage Section.

The record shows that the Carrier's Roadmaster issued a notice on November 22, 1950, which reads as follows:

"Des Moines, Iowa
November 22, 1950

Section Force—Talmage

Effective 5:00 P. M. November 24, 1950, section gang is reduced to foreman and two laborers. Employes affected exercise seniority.

(Signed) H. D. Singer
Roadmaster"

It also appears that this notice was posted on the bulletin board and orally conveyed to Claimant by the acting foreman. It also appears that the acting

foreman is not an officer as mentioned in Rule 12. Rule 12 provides that notice be given to the officer notifying them of the reduction.

We conclude that Claimant, being in a position to ascertain to whom the notice should be given, failed to notify the proper party. This Division is without proper authority to change existing rules.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 29th day of January, 1954.