

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Harold M. Weston—Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

BOSTON AND MAINE RAILROAD

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

(1) The Carrier violated the effective Agreement on January 12 and 13, 1955, when it failed to recall furloughed Trackman Albert Statuto to perform work on Section No. 20, Ayer, Massachusetts and, instead, assigned such work to extra gang employees;

(2) Furloughed Trackman Albert Statuto be paid a total of sixteen (16) hours at his respective straight time rate account of the violation referred to in part one (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: Trackman Albert Statuto is a regularly assigned employee of Section No. 20, with headquarters located at Ayer, Massachusetts. On January 7, 1955, he was cut off of this section account of reduction in force, at which time he filed his name and address in writing with his immediate superior as provided for under Rule 13, of the effective Agreement.

On January 12 and 13, 1955, the employees of Section No. 20, were engaged in replacing rail on the East Wye at Ayer, Massachusetts and due to the small number of employees comprising Section Gang No. 20, and in order to expedite this work, the Carrier assigned an Extra Gang from Fitchburg, Massachusetts to augment Section No. 20 in the performance of this work. The employees of this extra gang, together with employees from Section No. 20, worked eight (8) hours on each of the dates in question.

Claim was filed in behalf of furloughed Trackman Albert Statuto for sixteen (16) hours pay at his respective straight time rate account of the Carrier assigning employees of an Extra Gang, who hold no seniority rights on Section

plish the work which must be done. That is exemplified by the situation involved in Award 4700. No complaint was raised by the Employees in that docket about the mingling of crews or performance of work on a given section by extra crews, so long as the regularly assigned section crews were working."

This claim is unsupported by rule, and cannot be supported by the Petitioner. "Here, however, the contention is merely a conclusion of the pleader without adequate evidence to support it". See First Division Award 11471.

The claim is without merit and should be denied.

All data and arguments contained herein have been presented to the Petitioner in conference and/or correspondence.

OPINION OF BOARD: The Claimant is a trackman who was furloughed from Section Gang No. 20 when force was reduced on January 7, 1955. He complied with all procedural requirements to protect his seniority during his furlough. While the Claimant was on furlough, the Carrier assigned an Extra Track Gang from Fitchburg, Massachusetts to augment Section Gang No. 20 in replacing rail on the East Wye at Ayer, Massachusetts, on January 12 and 13, 1955. The employees of this extra gang, together with employees from Section No. 20, worked eight hours on each of those two days. There is no dispute regarding these facts.

It is the Petitioner's position that the Claimant should have been recalled for the sixteen hours of work performed on January 12 and 13, 1955, because of his seniority standing in Section Gang No. 20. The Carrier contends that the claim is without foundation since district seniority controls the situation and the Claimant's seniority was junior to that of all employees, including the extra gang, who performed the work in question. The Carrier's right to use the extra gang is not in controversy.

The governing provision in this matter is Rule 5-A of the Carrier's agreement with the Petitioner. This provision reads as follows:

"Seniority rights of trackmen and B&B laborers, as such, will be restricted to their respective gangs; except, on force reduction, trackmen and B&B laborers affected may, if they so desire, displace trackmen and B&B laborers junior in the service on the Supervisor's district where employed, provided such displacement rights are asserted within ten (10) days. When force is increased or vacancies occur, these trackmen and B&B laborers may return to their original positions according to their seniority. Employees out of service because of force reduction will be given an opportunity to return to service in accordance with seniority when forces are increased or vacancies occur."

One important purpose of seniority provisions, from the standpoint of the employe, is to insure his job protection in the event of layoff and re-employment after layoff. In the present situation, the Claimant was laid off because of lack of work on the section on which his gang worked. At that time and within ten days of his layoff, he could have, pursuant to Rule 5-A, elected to displace any trackman junior to him in service in the Supervisor's district in which he worked. This he did not do, probably either because his seniority

standing was not sufficiently high to warrant such action or because he did not wish to leave his local area. The language of that displacement clause of Rule 5-A is not mandatory and he forfeited no other rights by his failure to assert displacement rights within the required time. He still had his right of recall in line with his seniority.

When work did pick up on the Claimant's section sufficiently to require sixteen hours of work by an extra track gang, the Claimant was not recalled to his section gang. According to the Carrier, it had no obligation to do so unless some employee at work in the district was junior in service to the Claimant. In support of this position, the Carrier points to the exception clause of the first sentence of Rule 5-A. Awards 5261, 5950 and the other citations referred to us by the parties are of some general interest but do not deal with the immediate problem.

Rules 1, 2 and 3 of the Agreement treat generally with seniority, Rule 3-B stipulating that each " * * * territory under the jurisdiction of one Division Engineer shall constitute a separate seniority district, * * *" except as otherwise provided by the rules of the Agreement. The first clause of Rule 5-A does provide otherwise for trackmen and limits their seniority to their respective gangs. The exception clause that immediately thereafter follows in the first sentence of Rule 5-A gives trackmen the right, on layoff, to assert displacement rights throughout their district. The language of the exception clause is permissive and, it is significant to note, is a right granted only to the "affected" (or laidoff) trackman.

When vacancies occur in section gangs because of a pickup in work or some other reason, the laidoff trackmen are to be restored to their positions in line with their seniority in their respective gangs. Once the ten day period prescribed by the exception clause of Rule 5-A elapses, the Claimant lost his right to displace on a district-wide basis but he never forfeited his right to reinstatement under his normal seniority which is gang-wide. He complied with the procedural requirements of Rule 13 for the protection of seniority rights while on furlough. The exception only applies on layoff and then, only if rights under the exception are asserted within ten days.

This case must be distinguished from situations where an extra track gang has been rushed to handle a short emergency or where for some other valid reason it would be impracticable to recall the Claimant. Here there is no evidence in the record that any such situation existed. As a matter of fact, there was sufficient additional work to require an extra gang to augment the section gang for sixteen hours of work spread over two days in equal periods. In our opinion, the Agreement is sufficiently clear on the point in dispute and it would be inappropriate therefore to consider past practice. Cf. Award 6007.

In view of the foregoing considerations and since no valid justification appears in the record for having denied the Claimant the sixteen hours work in question, the claim is sustained.

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 there was a violation of the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 18th day of November, 1958.