Award No. 8525
Docket No. MW-8427

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Harold M. Weston, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

BOSTON AND MAINE RAILROAD

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

(1) The Carrier violated the effective Agreement when, on May 27, 31, and June 1 and 2, 1955, it assigned Section Gang No. 110 to perform work on the territory comprising Section No. 111 and failed to call and use Trackmen Rodney Eaton, Lawrence Eaton, Lionel A. Baron and Roy Boston who hold seniority on Section No. 111;

(2) The claimants referred to in Part (1) of this claim each be allowed pay at their respective straight time rates for an equal proportionate share of the total man-hours consumed by the members of Section Crew No. 110 in performing the work referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: Prior to May 27, 1955 the claimants, Trackmen Rodney Eaton, Lawrence Eaton, Lionel A. Baron and Roy Boston who were regularly assigned to and who hold seniority on Section No. 111, were furloughed in force reduction.

On May 27, 31 and June 1 and 2, 1955 the Carrier assigned Section crew No. 110, the members of which hold no seniority rights in the performance of general maintenance work on the territory comprising section No. 111.

The Claimants were fully qualified and available to perform work on the territory comprising their section, but were not notified or called to do so.

The Agreement violation was protested and a claim filed in behalf of the Claimants.

The claim was declined as well as all subsequent appeals.

The Agreement in effect between the two parties to this dispute dated May 15, 1942, together with supplements, amendments and interpretations thereto are by reference made a part of this Statement of Facts.

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 No. 11471. Claim is without merit and should be denied.

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

OPINION OF BOARD: The Claimants are four trackmen who were furloughed from Section Gang No. 111 in a force reduction. They complied with all procedural requirements of the Agreement between the Carrier and the Petitioner to protect their seniority during furlough. While the Claimants were on furlough, on May 27 and 31 as well as June 1 and 2, 1955, a neighboring crew, Section Gang No. 110, was used by the Carrier to augment Section 111 in its work. These facts are not in controversy and there is no question but that the work the two sections performed on the four days in question was of the general maintenance type and required no special skills that the Claimants did not possess.

The Petitioner contends that this factual situation establishes a violation of Rule 5-A of the Agreement and that the Claimants should have been recalled when additional work was necessary on their section and therefore are entitled to pay for May 27, 31 and June 1 and 2, 1955. The Carrier argues to the contrary, contending that Rule 5-A, particularly when considered in the light of the entire Agreement as well as past practice, provides for district-wide seniority for the Claimants and that they were not entitled to recall on the days in question since it does not appear that they were senior in service on a district-wide basis to anyone working in either of the two section gangs.

In Award 8524, we had occasion to consider the same issue and Agreement as are now before us. The principles and reasoning set forth in that Award are equally applicable here. In view of that fact and since no persuasive considerations have been presented in this record to lead us to reach a different result here, the claims will be 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 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 there was a violation of the Agreement.

AWARD

Claims 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.