

Award No. 9231

Docket No. MW-10149

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Thomas C. Begley, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**THE CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

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

(1) The dismissal of Napple Gamble, Ellis Jones and Willie Ford from service on November 19, 1956 was without just and sufficient cause, arbitrary, unfair, and in violation of the Agreement.

(2) Messrs. Napple Gamble, Ellis Jones and Willie Ford be restored to service and be reimbursed for all wage loss suffered because of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The Carrier maintains a stationary camp, identified as Camp No. 31, at Milwaukee, Wisconsin. The employees who are headquartered at Camp No. 31, are charged \$3.70 per day for board.

The Claimants, who maintained residence at Milwaukee, were regularly employed as laborers on **Division** Extra Gang No. 757, having worked thereon since August 13, 1956, May, 1954, and June 13, 1956, respectively, with headquarters at Camp No. 31, at Milwaukee.

Gang No. 757 was divided into two units, one unit performing track work, under the supervision of Foreman Nick Nashos, the other performing car cleaning service, under the supervision of Foreman W. Droese, both units being under the overall supervision of General Foreman Tony Grivello.

On or about October 16, 1956 the Claimants were instructed by General Foreman Grivello to work in the car cleaning unit, under the supervision of Foreman Droese.

On November 15, 1956 the Brotherhood's Assistant General Chairman had occasion to visit this crew and advised the Claimants, as well as others,

ployed as Extra gang laborers. This letter is Carrier's Exhibit "H". That claim, in behalf of Extra gang laborers Jones, Gamble and Ford, was the only claim presented on appeal to the undersigned within sixty days of the February 20, 1957 date of Superintendent Dombrowski's letter and it was declined by the undersigned under date of April 25, 1957 (Carrier's Exhibit I.)

As will be noted from Carrier's Exhibit "J" it was not until May 10, 1957 or eighty days after the February 20, 1957 date of Superintendent Dombrowski's letter of declination that a claim was allegedly made in behalf of "Section laborers" Gamble, Jones and Ford, section laborers falling in the category of "Division Track Forces".

As will be noted from the attachment to Carrier's Exhibit "L", the employees, in their proposed Joint Statement of Facts make reference to the Extra gang in which claimants were working as "* * * Division Extra Gang No. 757 * * *", attempting to infer that a difference exists between a so called "Division" extra gang and a so called "System" extra gang at least for purposes here. Neither the currently effective Schedule Agreement between the parties nor do previous agreements provide for a distinction between the two nor does Carrier's letter to the Employees dated December 1, 1954 which was in connection with Article V of the August 21, 1954 Agreement.

Regardless of how one looks at the case, it is a case improperly handled under the Time Limit Rule and is therefore barred but more important than that is the fact that the claim is entirely without merit, wholly lacking in agreement support.

Carrier respectfully requests that the claim be denied.

All data contained herein has been made known to the Employees.

(Exhibits not reproduced.)

OPINION OF BOARD: The claimants were dismissed from service on November 19, 1956, without written notice advising them of the cause for dismissal. The Carrier states the cause for dismissal was due to their poor work. The Organization states that the reasons they were dismissed from service were that the claimants joined the union on November 15, 1956 and also because they were away from the work camp on November 17th and 18th, 1956. The Carrier states that the claimants were working as extra gang laborers and as such under the agreement Rule 18 (g) were not entitled to written notice setting forth the cause of dismissal. Rule 18 (g) reads as follows:

"The provisions of this rule will not apply to extra gang laborers; nor will they apply to other employees who have been in the service sixty (60) days or less."

The record discloses that claimant, Ellis Jones had worked on Division Extra Gang 757 since May 1954, on or off, however the record does not disclose, nor did this claimant show that he had worked on this gang in continuous service for a period of nine months, which would have given him a seniority right under Rule 2 (a) which reads as follows:

"Except as otherwise provided for in these rules, seniority begins at the time an employee's pay starts as of last entry into

service. This does not apply to extra gang laborers who will not establish seniority rights until after they have been in continuous service for a period of nine (9) months."

If claimant Ellis Jones had held seniority under Rule 2 (a) he would have been entitled under Rule 18 (a) to have received a written notice advising him of the cause of his dismissal.

The Board finds; that the claimant Ellis Jones has failed in his proof to show a seniority under the agreement; that claimants Gamble and Ford as division extra gang laborers held no rights under the agreement to file a grievance or to ask for a hearing. Therefore the claims will be denied.

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 the Carrier did not violate the Agreement.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 12th day of February, 1960.

SPECIAL CONCURRING OPINION, AWARD NO. 9231 DOCKET NO. MW-10149

The Opinion of Board correctly states that the record does not disclose, nor did this claimant (Ellis Jones) show that he had worked on this gang in continuous service for a period of nine months, which would have given him a seniority right under Rule 2 (a). It correctly states, also, that Claimant Ellis Jones has failed in his proof of seniority rights under the Agreement and that Claimants Gamble and Ford as Division extra gang laborers held no rights under the Agreement to file a grievance or to ask for a hearing.

However, the Opinion of Board erroneously states that if Claimant Ellis Jones had held seniority under Rule 2 (a) he would have been entitled under Rule 18 (a) to have received a written notice advising him of the cause of his dismissal. While such part of the Opinion is dictum, we feel constrained to point out that it is in error for the reason that Claimant Jones was an extra gang laborer in the same gang as Claimants Gamble and

Ford and Rule 18 (g) provides unequivocally and without qualification that "The provisions of this rule will not apply to extra gang laborers; * * *." Consequently, the holding of seniority obviously is not a relevant factor in cases of this kind insofar as extra gang laborers are concerned.

The Findings and Awards are correct.

/s/ J. F. Mullen

/s/ J. E. Kemp

/s/ R. A. Carroll

/s/ W. H. Castle

/s/ C. P. Dugan