Award No. 9266

Docket No. MW-8532

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Roscoe G. Hornbeck, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

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

(1) The Carrier violated the effective Agreement when it permitted Section Laborer Loren Paxton to be displaced by Section Laborer P. R. Hewitt on December 20, 1954, and by Section Laborer G. R. Rankin on December 27, 1954;

(2) Section Laborer Loren Paxton be allowed the exact amount lost because of the violation referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: The Claimant, Mr. Loren Paxton, was regularly assigned as a section laborer on Section No. 32, with headquarters at Murray, Iowa.

Section Laborer P. R. Hewitt was regularly assigned as such on Section 34 at Afton, under the supervision of Section Foreman H. S. Stone.

Section Laborer G. R. Rankin was regularly assigned as such on Section 49 at New Virginia, under the supervision of Section Foreman B. M. Vanscoy.

During the period December 20 to 24, 1954 the Carrier required Section Laborer Hewitt to suspend work on Section 34 while Foreman Stone was on vacation. On December 20, 1954 the Carrier permitted Section Laborer Hewitt to displace claimant Paxton on Section No. 32. Mr. Paxton was recalled to service on Section No. 32 effective as of December 23, 1954. The Claimant thus lost eight hours' time on each of December 20, 21 and 22, 1954.

Similarly, commencing on December 27, 1954, the Carrier required Section Laborer Rankin to suspend work on Section No. 49 while Foreman Vanscoy was on vacation. On December 27, 1954 the Carrier permitted Section Laborer Rankin to displace claimant Paxton on Section No. 32. The Claimant thus lost eight hours on December 27, 28, 29, 30 and 31, 1954.

been given at least thirty-six (36) hours advance notice. Gangs will not be laid off for short periods, when proper reduction of employes can be accomplished by first laying off the junior employes."

There is no contention made, nor can Petitioner conscionably contend, that the claimant was not given proper notice required by Rule 8 before he was laid off. Neither can Petitioner contend a gang was laid off for a short period when proper reductions of employes could be accomplished by first laying off the junior employes. No section gangs were laid off. No employe junior to claimant was working during these periods.

Rule 10 of the schedule provides that employes laid off in force reduction may retain their seniority and right to recall by leaving their name and address on file with their superior officer. Rule 11 of the schedule provides that when forces are increased, laid-off employe will be given preference in seniority order. There is no contention made here that these rules were not complied with in the restoration of the forces involved in this dispute.

Actually, the only argument offered by Petitioner in support of this claim during the handling on the property, was that the vacation agreement in some unspecified manner prohibited laying off Section Laborers while their foremen were on vacation. The obvious defect in this argument is that **there are no prohibitions or restrictions on laying off employes contained in the vacation agreement.** Most force reductions are matters of economy to the Carrier. Whether the necessity for practicing such economy arises from increased costs of materials or increased payroll expense, Management is still free to make force reductions, subject only to the restrictions contained in the collective bargaining agreement. There being no limitation in the agreement on the Carrier's right to cut off section laborers in these circumstances, the claim of this employe cannot be sustained.

In conclusion, the Carrier respectfully submits that no provision of either the vacation agreement or the schedule agreement between the parties was violated by the force reductions made the subject of this dispute. This claim must be denied since it is absolutely without merit.

* * *

The Carrier affirmatively states that all data herein and herewith submitted has been previously submitted to the employes.

OPINION OF BOARD: Mr. Loren Paxton, regularly assigned Section Laborer on Section No. 32, at Murray, Iowa was laid off on November 30, 1954. On December 1, 1954, he displaced a junior laborer on Section 32, at Murray, Iowa. On December 20, 1954, Claimant was displaced by a Senior Section Laborer, P. R. Hewitt, who had been laid off in force reduction from Section 34 at Afton, Iowa. Paxton did not work on December 20, 21 and 22 but was recalled on December 23, 1954, on account of snow and worked on December 23 and 24. On December 27, 1954, Claimant was again displaced by a Senior Section Laborer, G. R. Rankin, who had been laid off in a force reduction on Section 49 at New Virginia, Iowa. Claimant Paxton then lost five days work from December 27 to December 31. He was recalled to the service on Section 32 on January 3, 1955, on account of increase of force.

It is for the days which Claimant was not permitted to work, as above stated for which he seeks compensation.

The basis of the Claim is that Laborer Hewitt on Section 34 was required to suspend work on that Section to compensate, in part, for a vacation of his Foreman, H. S. Stone. That Laborer Rankin of Section 49 was required to suspend work on that Section to pay, in part, for the cost of a vacation for his Foreman, B. M. Vanscoy, and that because these laborers by reason of their seniority displaced Claimant, he should be reimbursed for the time he thus lost.

The Carrier relies on its compliance with Rule 8 of the controlling Agreement and says in a letter from its General Superintendent to the General Chairman of the Organization that Claimant was laid off "to keep within the quota allowed section laborers on the division" and is "in no way connected with the granting of additional vacation to section foremen." This, of course, if true, would be a complete defense against the Claim. Although this defense is not specifically denied by the Claimant his claim is so inconsistent with the reason assigned by the Carrier for the layoff of Claimant, as to amount to a denial. So that, upon the defense as asserted in the letter the Carrier offers no proof and therefore fails in that respect.

But, the Claimant can not succeed on the weakness of a specific defense of the Carrier. He must maintain his Claim on the strength of his own proof.

It should be noted that the Claim is not based on bad faith of the Carrier in the layoff of Claimant to pay, in part, for a vacation for Claimant's Foreman, but as to the layoffs of Laborers Hewitt and Rankin, as related to the vacations of their Foremen. Indeed, it does not appear that Claimant's Foreman was on vacation at the time involved in the Claim. And it appears that Hewitt worked part of the time his Foreman was on vacation. To pursue the cause of the layoffs of Laborers Hewitt and Rankin with respect to the vacations of their Foremen is too remote and too uncertain and the proof inadequate, on the developments in the record, to support an allowance of the Claim.

In so holding we do not agree with the Carrier that an observance of the letter of Rule 8 of the controlling Agreement meets all the intendment of that Rule or of the Agreement. We have held to the contrary in Docket 8475.

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 Employe involved in this dispute are respectively Carrier and Employe 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 proof is not made of a violation of the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of March, 1960.