Award No. 9267
Docket No. MW-8533

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 Agreement when Section Laborers J. Carter, V. Reed, E. Hart, D. R. Yeoman, W. S. Jenkins, R. S. Hubb, R. Goben and C. J. Robinson were required to suspend work on their respective sections while their respective foremen were on vacation:

(2) Each of the claimants named in part (1) of this claim be allowed eight (8) hours pay for each day in which they were required to suspend work on their respective sections while their respective foremen were on vacation.

EMPLOYES' STATEMENT OF FACTS: The Claimants named in part 1 of the Statement of Claim were regularly assigned to the position of section laborer on various sections on the Carrier's Ottumwa Division.

During November and December of 1954, the Carrier required the Claimants to suspend work on their respective sections while their respective foremen were accorded paid vacations.

The names of the claimants, the section to which each were assigned and the periods each were required to suspend work on their respective sections are as follows:

Claimants	Section	Dates
J. Carter	A-1	12/13 to 12/24 — 1954
V. Reed	A-9	12/1 to 12/10 — 1954
E. Hart	13	12/6 to 12/10 — 1954
D. R. Yeoman	14	11/29 to 11/30 — 1954
W. S. Jenkins	20	12/27 to 12/28 — 1954
R. S. Hubb	25	11/29 to 11/30 — 1954
R. Goben	25	12/1 to 12/3 — 1954
C. J. Robinson	25	12/6

2. 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.

In view of the above, this claim must either be dismissed for lack of jurisdiction, or 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: Carrier asserts that the Claim is invalid under the National Time Limits Agreement of August 21, 1954 and particularly Sections 1 and 2 thereof.

The applicable Sections of this Agreement are:

> "1. All claims or grievances arising on or after January 1, 1955 shall be handled as follows:
>
> > "(a) All claims or grievances must be presented in writing **by or on behalf of the employe involved,** to the officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based. * * *" (Emphasis ours.)
>
> "2. With respect to all claims or grievances which arose or arise out of occurrences prior to the effective date of this rule, and which have not been filed by that date, such claims or grievances must be filed in writing within 60 days after the effective date of this rule in the manner provided for in paragraph (a) of Section 1 hereof, and shall be handled in accordance with the requirements of said paragraphs (a), (b) and (c) of Section 1 hereof."

The occurrences out of which the Claim here arose were in late November and December, 1954. The Claim was presented to the first officer of the Carrier authorized to receive it on January 28, 1955.

The time limit fixed by the quoted Agreement is easily resolved once the decisive issue is determined, viz, whether the Claim is invalid for failure to specifically name the individuals for whom the Claim is made. If the Claim as originally presented "was by or on behalf of the employes involved" it was filed within the time limit fixed by the Agreement, otherwise it was not filed within time.

There is merit, in the abstract, in the position of the Carrier on this issue of the necessity of naming the specific individuals for whom the Claim is made. This is requisite, so that it may have the opportunity to assert any defense against the specific individual named. Manifestly such defense may at times differ depending upon the identity of the Claimant. But this situation did not develop here. The purpose that the Carrier should know the specific Claimants fairly appears. The Claimants were identified by Section number of the Division involved, the dates when laid off were set forth and the Carrier was informed that these layoffs occurred when the Foreman of the section named was on vacation. The Carrier was informed at the time of the original presentation that the specific names would be provided later. That the Carrier was cognizant of the identity of Claimants appears from the

letter from the Superintendent of the Carrier, upon original presentation of the Claim, to the General Chairman of the Organization. This, in our judgment, meets the intendment of the Agreement.

Our holding, of course, is restricted to the facts in this submission.

We come then to the merits of the case.

The Claim as set up in the first letter of the Organization to the officer of the Carrier authorized to receive it included but five items. As presented in the ex parte submission of the Organization there are eight Claimants named. Manifestly no more Claimants can be recognized than were included originally.

The following shows the status of the claims:

As originally presented	As later named
Section 14, 11/29/54 to 12/3/54	D. R. Yocum
Section A-9, 12/1/54 to 12/10/54	V. Reed
*Section 14, 12/6/54 to 12/10/54	Not named
Section A-1, 12/13/54 to 12/24/54	J. Carter, for 1 day.
Section A-20, 12/27/54 to 12/31/54	W. S. Jenkins, for 1 day.

*Sec. 25, R. S. Hubb, 11/29/54 to 11/30/54, 2 days.

*Sec. 25, R. Goben, 12/1/54 to 12/3/54, 3 days.

*Sec. 5, C. J. Robinson, 12/6/54, 1 day.

The Claims prefixed by asterisks must fail.

They are R. S. Hubb, R. Goben and C. J. Robinson, all of Section 25, for the reason that there were not set up in any manner in the Claim as first presented to an officer of the Carrier. Section 14, 12/6 to 12/10/54, set up in original Claim but not identified later.

The purpose of the Carrier in the lays offs of the other Section Laborers for whom the Claim is made appears from the instructions of the Superintendent to the Foremen of the various sections.

To Des Moines:

> "While Smith is off on vacation November 29th to December 10th inclusive and is being replaced by E. O. Brown it will be necessary that one laborer be laid off section A-9 during that time. Arrange * * *."

The laborer who was laid off pursuant to this instruction was Claimant V. Reed, whom the Carrier says according to its records was laid off one less day than claimed.

The message of instruction to Foreman D. E. Lowry, Ottumwa:

> "When Lowry takes his vacation November 29th to December 3rd inclusive it will be necessary that Section 14 be reduced one laborer during that time. Arrange * * *."

The laborer laid off because of this message was Claimant D. R. Yeoman.

The instruction to C. Manley, Lovilia, Iowa:

> "Summers Sec. 20 Albia taking vacation Dec. 13 to 31st inclusive Brown relieve him. It will be necessary that Section A-1 lay one section laborer off Dec. 13 to 24 inclusive and Sec. 20 lay off one section laborer Dec. 27 to 31st inclusive Arrange ACK H-75."

The laborers involved in this message were Claimants J. S. Carter and W. S. Jenkins.

The subject matter of the instructions heretofore quoted discloses the purpose, and insofar as the record shows, the sole purpose, of laying off the Section Laborers included.

We are of opinion that the action of the Carrier was for the reason asserted by the Organization and that it was a violation of the spirit and intendment of Rule 8 and the controlling Agreement between the parties.

Our position in this Award is in accord with Award 3005, Carter, Referee, wherein it is said:

> "The Carrier urges that it is within the province of management to make necessary force reductions and that its actions in this respect are not subject to review. This is generally true when it is done in good faith, but where it appears, as here, that the claim that a force reduction was being made is not sustained by the record, it may not be used to excuse a violation of the Agreement. If the rule should be otherwise, every contract violation depriving an employe of work could be excused by the simple expedient of announcing it as a force reduction. The Agreement does not contemplate the avoidance of its terms by so simple a method."

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 the Agreement was violated.

AWARD

Compensation to be allowed Claimants D. R. Yoeman, 2 days, V. Reed, 6 days, J. Carter, 1 day and W. S. Jenkins, 1 day.

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.