

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John Day Larkin, Referee

PARTIES TO DISPUTE:

THE BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
THE DELAWARE AND HUDSON RAILROAD CORPORATION

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

(1) The Carrier violated the Agreement when it assigned Painter Charles Girard to perform Carpenter Helper's work subsequent to March 31, 1955, while Robert Gravell and other employees who hold seniority as Carpenter Helpers were furloughed.

(2) Robert Gravell be allowed pay at the Carpenter Helper's rate for an equal number of hours as was consumed by Painter Charles Girard in performing Carpenter Helper's work while Robert Gravell was furloughed.

(3) For each day following claimant Gravell's recall to service on which Painter Girard is required or permitted to perform Carpenter Helper's work while other employees having seniority on the Carpenter's roster remain on furlough, the senior of such furloughed employees on each of such days be allowed pay therefore at the Carpenter Helper's rate for the same number of hours consumed by Painter Girard in performing Carpenter Helper's work.

EMPLOYEES' STATEMENT OF FACTS: Prior to March 31, 1955, claimant Robert Gravell and other B&B Carpenters and Helpers, were furloughed from railway service account of force reductions.

Subsequent to March 31, 1955, the Carrier assigned Painter Charles Girard to perform carpenter helper's work and failed and/or refused to recall furloughed carpenter helpers to perform the work necessary in repairing the roof of the storehouse at Plattsburg, New York; removing storm windows from roundhouse at Rouses Point, New York; and general carpenter helper's duties.

Claim as set forth herein was filed; the Carrier denying the claim.

The Agreement in effect between the two parties to this dispute dated November 15, 1943, together with supplements, amendments, and interpretations thereto are by reference made a part of this Statement of Facts.

John M. Huskie—March 9 to September 20, 1954
November 15, 1954 to June 6, 1955 (resigned)

Reginald C. Wells—December 14, 1953 to September 28, 1954
November 15, 1954 to June 13, 1955 (resigned)

During all of the periods when employes of B&B Gang No. 1 in the carpenters' class were furloughed and Painter Girard performed carpenter's or carpenter helper's work, the only claims presented for employes in the carpenters' class were the claim involved in this docket and the claim identified as Case 2.55 M.W/ referred to herein.

In a claim identified as Case 11.51 M.W., carpenters' work performed by trackmen was claimed for employes assigned to B&B Gang No. 1, including Painter Girard. Claim was settled on the property and Painter Girard, along with the carpenters and carpenter helpers employed in B&B Gang No. 1, was allowed one hour's pay. It will be noted that in this case the organization representatives claimed that Painter Girard, as a member of B&B Gang No. 1, was entitled to any work that belonged to B&B Gang No. 1 even though it was clearly carpenter's work. The particular work performed by trackmen was removing a temporary track carry installed by B&B Gang No. 1. No painting work was involved.

To sum up carrier's position, Painter Girard has worked with B&B Gang No. 1 and, in addition to painting, has performed carpenter's and carpenter helper's work for years. With the exception of the instant claim and one other, the employes have never protested or made a claim for a carpenter helper account carpentry work performed by Painter Girard. During many periods, employes in the carpenters' class have been furloughed while Painter Girard has been employed continuously. When trackmen performed carpenters' work, which the employes contended should have been performed by B&B Gang No. 1, the employes made claim for Painter Girard, the same as for the carpenters and carpenter helpers employed in B&B Gang No. 1. Such claim was allowed and Painter Girard was paid the same as the other members of B&B Gang No. 1 for carpenters' work performed by trackmen.

The existing practice as to assignment of work to painters, carpenters and carpenter helpers employed in B&B Gang No. 1 has been in effect for years. The employes made claim for a painter under this practice account carpenter's work performed by trackmen and accepted pay for the painter.

Carrier respectfully requests that claim be denied.

Management affirmatively states that all matters referred to in the foregoing have been discussed with the committee and made part of the particular question in dispute.

OPINION OF BOARD: The basic facts of this case are not in dispute. Claimant Robert Gravell and other B & B carpenters and helpers had been furloughed from service prior to March 31, 1955. Following this date, Carrier assigned painter Charles Girard to certain duties commonly performed by carpenters helpers in repairing the roof of the storehouse at Plattsburg, New York, in removing storm windows from roundhouse at Rouses Point, New York, and other carpenter helper duties.

This claim is based upon the following rules of the Agreement:

"SENIORITY

"Rule 1. (a) Seniority begins on the date the employe last entered the service in the Maintenance of Way Department.

NOTE:—This rule does not apply to furloughed employes who take temporary employment in some other department or outside concern during period of furlough under Rule 10.

"(b) An employe will hold and accumulate seniority in his own class and in all lower ranks of his class." (Emphasis ours.)

"Rule 2. Rights of employes to positions shall be based on ability, merit and seniority. Ability and merit being sufficient, seniority shall prevail.

"Rule 3. (a) Seniority rights of employes, except trackmen and laborers, are confined to the sub-department and class in which employed and to the division on which they are located.

NOTE:—A seniority division is that part of the Railroad over which one division engineer has jurisdiction."

It is not denied that Claimant Gravel took the proper steps to protect his seniority rights as required by Rule 10 of the Agreement.

Rule 4 further provides that:

"Employes displaced or out of service because of force reduction will be given an opportunity to return to service or to former positions in accordance with their seniority when forces are increased or vacancies occur."

The record indicates that, for a number of years, the Carrier has sought to get a change in the rules so that employes will be permitted to cross craft lines. The Organization has consistently opposed this. First, the Organization has not agreed to a change in the rules which would permit the free use of "composite" gangs with all members performing work without regard to class or craft designations. Second, when the Carrier has sought to get this Board to recognize as legitimate the use of employes outside of their craft designations, the Organization has repeatedly filed claims which have been sustained by the Board. See Awards 4800, 5946, 6196, and 7389, all of which involve the same parties and the same rules.

The case now before us is to be distinguished from that cited by the Carrier which also involved the same parties. In Award 6053, a claim on the part of the B & B employes for the exclusive right to perform certain work which had been assigned to the Track Department was denied. In our opinion Award 6053 is not controlling in the situation now before us.

We sympathize with the Carrier's wish to make the most efficient use of its working force. However, in view of the record in this case, it appears that a more liberal use of employes without regard to craft designations is a matter for further negotiation.

The Board should not now depart from the principles it has repeatedly enunciated in comparable situations involving the same parties.

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 Agreement has been violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 4th day of August 1961.