Award No. 11448
Docket No. MW-10582

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

ILLINOIS CENTRAL RAILROAD COMPANY

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

(1) The Carrier was in violation of the Agreement for the period January 9th through January 25, 1957 during which time it employed an extra gang on the Section Laborer's seniority district identifiable as 'Supervisor G. W. Davis' territory' which regular section laborers were 'available in that seniority district.'

(2) Section Laborers Fred A. Kruger, Earl Reynolds, Oscar Ricketts and Roy Ricketts, who were laid off from the seniority district here in question and who were willing and available for recall to service each be reimbursed for the exact amount of wages each lost because of the violation referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: In December of 1956, the claimants, who were regularly assigned section laborers on the Section Laborers' seniority district identified as "Supervisor G. W. Davis' territory", were laid off account of force reduction.

During the period January 9 through January 25, 1957 the Carrier employed and used an extra gang to perform routine section maintenance work on the above referred to section laborer's seniority district, but refrained from recalling the claimants, who were available, ready, and willing to perform work on their seniority district, to service.

The Employes have contended and continue to contend that it is a violation of the subject agreement for the Carrier to employ and use an extra gang on a section laborer's seniority district during instances — where, as here — it had regular section laborers, such as the instant claimants, in furloughed status and available for recall to service on that seniority district during the period involved.

The Agreement in effect between the two parties to this dispute dated September 1, 1934, together with supplements, amendments, and interpretations thereto is by reference made a part of this Statement of Facts.

of another's work domain, we see no need to look beyond the composite service rule in the Agreement for a remedy. Actual overtime not being involved, and there being nothing of record on which to base a finding that the extra gang was worked in place of regular section gang to avoid overtime, Rule 26(g) is not applicable to the facts in dispute."

A perusal of the facts involved in the claim before this Board will substantiate that:

1. The extra gang utilized at Odin, Illinois, was not a seasonal extra gang.

2. The section laborers assigned to work at Odin, Illinois, were fully occupied during the period the extra gang worked on their section.

3. No overtime was worked by the extra gang.

4. The Claimants, failing to exercise their rights under Rule 6 had no contractual right to the heavy maintenance work performed by an extra gang on a section other than that in which they held seniority rights.

The Employes have a burden of coming before this Board and presenting positive and substantial evidence in support of their claim. There is no rule in the agreement specifically prohibiting the action taken by the Carrier and the Employes have failed to establish any evidence to the contrary. The claim before the Board must be denied because the agreement does not require that furloughed section laborers on one section must be recalled to duty before an extra gang is utilized on another section. The Employes' request in part (2) of their claim to compensate furloughed section laborers for alleged wage loss is without basis as they had no contractual right to the work involved at Odin, Illinois.

All data in this submission have been presented to the Employes and made a part of the question in dispute.

OPINION OF BOARD: At the time this claim was made, Claimants had been furloughed from their regular assignments as Section laborers in Sections 46, 48 and 54. They had chosen not to exercise their displacement rights under Rule 6(b), which reads as follows:

"(b) Seniority rights of section laborers in the Track Department as such, will be restricted to their gangs, except when forces are reduced, laborers affected will have the right to displace junior laborers in service on the Supervisor's district on which employed."

and had, instead, filed their names and addresses in writing with the Carrier in order to protect their seniority rights under Rule 15, the pertinent portion of which reads:

"An employe laid off account force reduction desiring to retain his seniority rights, must within fifteen (15) days file his name and address in writing with his employing officer and renew same each sixty (60) days, also notify such officer of any change in address. When forces are increased, the employe will be notified and must

return to service within ten (10) days. Failure to comply with these provisions, unless prevented by sickness of himself, will result in loss of seniority."

On January 9, and continuing through January 31, 1957, an extra gang regularly assigned on the Illinois Division performed tie-renewal and track-surfacing work on Section 53 which was located in the same seniority district (Supervisor Davis' territory) as the sections to which Claimants had been assigned prior to being laid off. The parties are in dispute as to the precise nature of the work performed — Petitioner alleges it was routine maintenance; the Respondent says it was heavy maintenance work under "the 1957 Tie Renewal and Surfacing Program." Neither offered any supporting evidence to sustain its respective contention, and in the absence thereof, the Board cannot resolve the conflict. (Award 6091.)

The record is clear, however, that the extra gang did not perform any work on those sections where these Claimants held seniority rights under Rule 6(b). That rule plainly states that those seniority rights are restricted to the gangs to which section laborers are assigned, with one exception: when forces are reduced those laid off will have the right to displace any other section laborers junior in seniority employed anywhere within the Supervisor's district. Thus the right of displacement enjoyed by senior section laborers **when furloughed** extends throughout the Supervisor's district and is not, therefore, limited to the gangs to which they had been assigned. No other exception is made nor may any other be implied. (Award 2009.) It follows that with the stated single exception, the seniority rights of section laborers under Rule 6(b) are confined to their respective gangs. (Cf. Award 8524.)

Under Rule 6(i), these Claimants could have exercised displacement rights granted by Rule 6(b) within fifteen days after being furloughed. They chose not to do so. Instead, they filed the information required under Rule 15 and, thereby, elected to be recalled on their respective gangs in accordance with their seniority when forces were increased. Claimants had no seniority or displacement rights in Section 53 where the extra gang was used after they had decided not to displace under paragraphs (b) and (i) of Rule 6.

Paragraph (f) of Rule 38, captioned "Overtime", reads as follows:

"(f) Seasonal extra gang laborers will not be used to perform routine section maintenance work when regular section laborers are available in that seniority district."

When read within the context of the whole rule, which treats only of the subject of overtime, the meaning and intent of paragraph (f) must necessarily be related to the same subject. When so considered, it clearly has no application to displacement or seniority rights, but is designed to give regular section laborers a preferential right to overtime vis-a-vis "seasonal extra gang laborers."

The Agreement does not support this claim under the facts of record. Accordingly, it 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 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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of May 1963.