Award No. 11557
Docket No. MW-10826

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

SOUTHERN RAILWAY COMPANY

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

(1) The Carrier violated the effective Agreement when it laid off all the hourly rated employes assigned to District Rail Gangs Nos. 2-A and 2-B on February 7 and 8, 1957.

(2) Each of the claimants referred to in Part (1) of this claim, who actually worked on Wednesday, February 6, 1957, be allowed sixteen (16) hours pay at their respective straight time rates because of the violation referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: The claimants referred to in the Employes' Statement of Claim were regularly assigned to their respective hourly rated positions such as machine operators, laborers and etc., on District Rail Gangs Nos. 2-A and 2-B, with headquarters in outfit cars, located at Moscow, Tennessee on the Memphis Division.

They were regularly assigned to a 40-hour work week, consisting of five days, eight hours each, Monday through Friday, with Saturdays and Sundays as designated rest days.

At the close of the work period on Wednesday, February 6, 1957, the claimants were advised by the Carrier that each was laid off on Thursday, February 7 and Friday, February 8, 1957 while their outfit cars were in transit to Ridgecrest, North Carolina, but each was instructed to report for work at the regular starting time at Ridgecrest on Monday, February 11, 1957. No compensation was allowed any of the claimants for February 7 and 8, 1957.

Consequently, the claim as set forth herein was presented and handled in the usual manner on the property and was declined at all stages of the appeals procedure.

The Agreement in effect between the two parties to this dispute dated August 1, 1947, together with supplements, amendments, and interpretations thereto are by reference made a part of this Statement of Facts.

Claim being barred should be dismissed by the Board for want of jurisdiction. If, despite this fact though, the Board assumes justification, it cannot do other than make a denial award.

All evidence here presented in support of Carrier's position is known to employe representatives.

Carrier, not having seen the Brotherhood's submission, reserves the right after doing so to make response thereto and present any additional evidence necessary for the protection of its interests.

OPINION OF BOARD: Carrier first raises a procedural question. They contend that the claim is not presented on behalf of named individuals as required by Section 1(a) of Article V of the Agreement of August 21, 1954.

The claim before us is on behalf of "hourly rated employes assigned to District Rail Gangs Nos. 2-A and 2-B." We have repeatedly held that: "The fact that the claim is general and fails to name the Claimants except as a class is not a bar to the disposition of the claim." Awards 3687, 3763 and 5117 (Wenke). It is also a well established principle of this Division that a claim is valid where the Claimants can be easily ascertained and are readily identifiable. Awards 10059 (Daly), 10092 (Carey), 10122 (Carey), 10515 (Dolnick), 10533 (Mitchell) and many others.

The Claimants here are readily identifiable and can be easily ascertained. The issue needs to be decided on the merits.

District Rail Gangs Nos. 2-A and 2-B were assigned to work Monday through Friday. They were engaged in laying new rail between Collierville and Moscow, Tennessee, on Carrier's Memphis Division. The work was completed on Wednesday, February 6, 1957 and the gangs were notified that they were laid off and that they could report for work at Ridgecrest, North Carolina, on Monday, February 11, 1957. Carrier provided extra coaches on passenger train 46 leaving for Memphis, to accommodate employes who desired to visit their families during the intervening days. In the meantime, sixteen camp and equipment cars were moved from Moscow, Tennessee to Ridgecrest, North Carolina.

Petitioner contends that the Carrier violated Rule 44 of the Agreement which reads as follows:

> "Gangs will not be laid off for short periods when proper reduction of expense can be accomplished by first laying off the junior men."

It is Petitioner's position that:

> "Here, the Claimants were not laid off because a proper reduction of expense could not be accomplished by first laying off the junior men but because their outfit cars were in transit from Moscow, Tennessee to Ridgecrest, North Carolina, a definite violation of the afore-quoted rule."

There is nothing in the Agreement which requires Carrier to guarantee the employes forty hours work in five days—in this case Monday through Friday January 4 through 8, 1957. Petitioner does not claim that there is such a guarantee.

Petitioner seems to rely heavily upon the fact that Carrier advised the employes that they could spend the weekend with their families. On this point, Petitioner says in the record: "When the carrier contends that the claimant employes could make weekend visits to their homes after being allegedly laid off on Wednesday, February 6, 1957, it necessarily implies that the claimant employes would receive a weekend consisting of four days, namely Thursday, Friday, Saturday and Sunday." This is a fallacious implication. There is no basis of fact for such a conclusion. The record does not show that the Carrier had such an intention.

Rule 44 limits Carrier's right to lay off gangs when the purpose of such layoff is to reduce expense. That is not the primary reason here. The work of the gangs was completed on January 6, 1957. There was no work available on that assignment. It was necessary to move the camp cars and equipment cars to another area where the same gangs were to lay rail. This did not require the services of the Claimants. While the layoff did reduce Carrier's total expense, the record contains no evidence that the movement of camp and equipment cars could have been done under other circumstances.

Nowhere in the record does Petitioner show that junior men could have been laid off to permit senior employes to remain at work and move camp and equipment cars to another location.

In the absence of any rule requiring Carrier to guarantee employes any number of days of work, in any week, and in the absence of any affirmative evidence that senior employes could have been retained if junior employes were laid off, we are obliged to conclude that Rule 44 is not applicable.

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 is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of June, 1963.