# Award No. 12659
# Docket No. MW-11747

## NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

## (Supplemental)

David Dolnick, Referee

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## PARTIES TO DISPUTE:

## BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

## CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

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

(1) The Carrier violated the effective Agreement on December 20, 1958 when it used section forces instead of Coal Car Cleaners B. K. Wilson and B. S. Shubert to clean cars at Buckheart Mine.

(2) Coal Car Cleaners B. K. Wilson and B. S. Shubert each be allowed eight hours' pay at the Coal Car Cleaner's overtime rate account of the violation referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: The Claimant employes hold seniority as Coal Car Cleaners under the provisions of an Agreement between the two parties to this dispute which is exclusively confined and restricted to Coal Car Cleaners.

On Saturday, December 20, 1958, it was necessary to clean some cars for coal loading at what is now called the "Buckheart Mine", but which was formerly called "United Electric No. 17" and which represents the thirteenth mine listed in the scope rule of the subject Agreement. Coal Car Cleaners and Section forces are all assigned a work week of Monday through Friday.

On Friday, December 19, 1958, Division Superintendent Hamer instructed Section Foreman G. P. Williams to take his section crew to Buckheart Mine on the following day (Saturday, 12/20/58—a day which is not a part of any assignment) to clean cars for coal loading at the Buckheart Mine. Those instructions were telephoned to Section Foreman Williams, who then asked Superintendent Hamer whether he was to call coal car cleaners for this work. The Superintendent instructed Section Foreman Williams not to call or use any coal car cleaners to clean those cars for coal car loading.

The instant claim was filed and handled in the usual and customary manner up to and including the Carrier's highest appellate officer.

It should be borne in mind that the controlling agreement applicable to coal car cleaners does not contain a so-called "temporary" or "short" vacancy rule that is found in many agreements, under which employes are permitted to exercise seniority to other than permanent vacancies. The agreement applicable to this dispute permits employes to exercise seniority only to permanent vacancies, or new positions of 30 or more days duration; and/or to exercise seniority when laid off in force reduction or when displaced. None of these elements exist in the instant case, because there was no permanent vacancy or new position of 30 or more days duration in existence, and claimants were not laid off in force reduction or displaced. The applicable collective agreement is peculiar to this Carrier, and the Carrier contends that the Board is obligated to confine its decision to the interpretation of the rules involved in this particular agreement, irrespective of awards that Petitioner might cite where the claim might be similar but where the rules are different from those contained in this agreement.

The Carrier has refrained from citing awards in this submission because, as stated above, the applicable agreement does not contain temporary or short vacancy rules which are commonly found in collective agreements. If the Board will keep this in mind when making its deliberations, together with the provisions of Rule 9, it should have no difficulty in denying the claim in its entirety.

**OPINION OF BOARD:** Claimants were assigned as Coal Car Cleaners at the Little Sister Mine. No Coal Car Cleaners were assigned at the Buckheart Mine formerly called United Electric No. 17. Both mines are listed in Rule 1 — Scope of the Agreement.

The record shows that the mine company generally furnished and cleaned its own coal cars. On occasions the mine company had requested the Carrier to furnish coal cars. Such a request was made on December 20, 1958. Carrier furnished 20 drop bottom gondola cars and directed the Canton Section Gang to clean them. The Section forces are not covered in the Agreement.

Rule 1 — Scope provides as follows:

**"RULE 1**

> These rules shall govern the hours of service and working conditions of coal car cleaners employed by this Company at the following mines: . . ."

Among the mines listed in this Rule are the Littel Sister Mine where the Claimants worked and United Electric No. 17 later called the Buckheart Mine where the cars were cleaned by the Canton Section Gang.

Claimants acquired seniority rights under Rules 2 and 3 of the Agreement. Their seniority rights under Rule 4 extended "over all mines included in Rule 1."

There was no permanent vacancy at the Buckheart Mine which would have entitled Claimants to exercise their seniority under Rule 9. Carrier furnished clean cars only occasionally. An emergency or temporary vacancy, at most, existed on December 20. We find no Rule in the Agreement dealing with the subject of temporary vacancies. If Carrier was obligated to use employes covered by the Agreement to clean the cars on December 20, 1958, they would only be obliged to call the senior idle available car cleaners to

do this work. Claimants do not allege that they were the senior idle available employes. On the contrary, from the evidence in the record we must assume that Claimants worked their regular assignments that day and that they were not available for work at the Buckheart Mine.

Petitioner admits that Section men were used when coal car cleaners were not available. In its Ex Parte Submission, Petitioner said:

> "The fact that Coal Car Cleaners have been used to clean cars at the subject mine is not open to dispute nor is the fact that Claimant Shubert was the last coal car cleaner regularly assigned to the subject mine. In fact, **just exactly one week following the date here mentioned, Section Foreman Williams used two coal car cleaners to clean cars at this same mine, assisted by two sectionmen because of the inavailability of other coal car cleaners.**" (Emphasis ours.)

On the basis of the record, we are obliged to conclude that there is no merit to the claim.

**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 Carrier did not violate 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 19th day of June 1964.