

Award No. 12684

Docket No. MW-11641

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David Dolnick, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

STATEMENT OF CLAIM: (1) The Carrier violated the effective Agreement when, during May and June of 1958, it used Traveling Section Gang No. 272 to perform work on the territory comprehended in the Torrington and Mitchell sections and failed to call and use furloughed Section Laborer L. Otero who holds rights to be recalled to those sections.

(2) Section Laborer L. Otero now be allowed the exact amount lost because of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: On March 21, 1958, the claimant, Mr. L. Otero, who has established and holds seniority as a section laborer and who was regularly assigned as such on the section headquartered at Torrington, Wyoming, was laid off account of reduction of forces on that section.

The claimant submitted Form 2740-A to the Carrier on March 21, 1958 to protect his accumulated seniority and indicated thereon that he desired to be recalled to service on the section headquartered at Torrington, Wyoming and the section headquartered at Mitchell, Nebraska in the manner required by the Agreement rules.

On April 16, 1958, Traveling Section Gang No. 272 was organized and placed into service to perform regular maintenance work over the claimant's seniority district.

On May 22, 1958, the aforementioned Traveling Section Gang was moved to the territory comprehended in the Torrington section and worked thereon until May 28, 1958, when the gang was moved to the territory comprehended in the Mitchell section, working thereon for approximately three weeks thereafter.

The claimant Section Laborer, who was in furloughed status, was available to perform work on both the Torrington and Mitchell sections but was not called or notified to do so. Consequently, the subject claim was presented

Both parties have always understood that a traveling section gang is a gang which by its very name, is one designated to travel over the seniority district to perform section work. Traveling Section Gang #272 is such a gang, and it traveled over that part of the roadmaster's territory from Lingle to Bayard, including the Mitchell and Torrington sections, as shown in Carrier's statement of facts, performing the work that is regularly and customarily performed by such gangs. Forces were not increased on any of the stationary sections on which the traveling gang worked. However, Petitioner contends, for some unexplained reason, that the Carrier "should have increased the forces on the Mitchell and Torrington sections" while gang 272 was working thereon, but not on any of the other stationary sections on which gang #272 worked. There, of course, is no more reason under the agreement for Carrier to increase the complement of those two sections than there is to increase the complement of any of the other sections over which gang #272 traveled and worked. The schedule of rules agreement; the Memorandum of Understanding dated November 27, 1957; and the letter of understanding dated December 3, 1957, quoted above, can be searched with a most piercing eye, and nothing can be found therein to require Carrier to increase the force on a stationary section gang while a traveling section gang is working thereon. It must be remembered that Traveling Section Gang #272 worked on nine different sections between April 16 and September 30, 1957, and the Petitioner has never contended that the forces on any of these sections, except Mitchell and Torrington, should have been increased. Petitioner admits that Carrier was not required to increase forces on seven of the nine sections, and Petitioner likewise offers no reason for contending that Carrier "should have increased forces on these two sections". Petitioner also admits, without equivocation, that the force or number of employees needed to perform the work is now, and always has been the sole and inherent right of Carrier to decide.

In summary, it must be remembered that:

(1) Claimant in this case was offered employment in traveling section gang No. 272 in strict and literal compliance with the agreement, and that he voluntarily chose not to accept such employment.

(2) Forces were not increased on any of the stationary sections over which gang #272 traveled and worked, and Petitioner so admits in Carrier's Exhibit No. 3.

(3) There is no requirement under any rule, agreement or understanding to increase the permanent force on any stationary section while a traveling gang is working thereon.

With these facts firmly established and agreed to by the parties, there can be no decision except denial of the claim in its entirety.

(Exhibits not reproduced).

OPINION OF BOARD: Claimant was a section laborer holding seniority on the Roadmaster's territory known as the Alliance-Sterling-Cheyenne-Northport-Guernsey-Union-Brush subdivision of the Sterling Division. He was laid off from the Torrington section on March 21, 1958 and, having elected not to exercise his seniority displacement rights, executed form 2740-A, indicating his desire to be recalled only to sections Torrington or Mitchell when forces are increased in his grade and group on his seniority district.

Traveling Section Gang #272, which was programmed to work over the Roadmaster's territory—including the Torrington and Mitchell sections, was

organized while Claimant was on layoff. He was contacted on April 8, 1958, and asked to return to service on Traveling Section Gang #272, but he refused that assignment.

Traveling Section Gang #272 worked in the Torrington section from May 22, 1958 through June 6, 1958 and in the Mitchell section from June 9, 1958 through June 27, 1958.

It is Petitioner's "position that the Carrier's action in assigning Traveling Section Gang No. 272 to perform work on the Torrington and Mitchell sections without first recalling the claimant to service is a violation of the effective Agreement." The claim is for eight (8) hours for each day from May 22 through June 6, 1958, and from June 9, through June 27, 1958.

Basic evidentiary facts have been established. There was no increase of section gangs in the Torrington and Mitchell sections. Claimant was given an opportunity to work in Traveling Section Gang #272 when that gang was first organized and he elected not to accept such assignment.

Section Laborers hold seniority in the Roadmaster's territory in accordance with the provisions of Rule 5 (b) which reads as follows:

"(b) Employees in Grade C of Group 1 of the Track Sub-department shall have seniority on the Roadmaster's territory on which employed. For purpose of promotion, their seniority will extend over an Operating Division."

Under Rule 9 (d) Claimant could have displaced a junior employee in the same grade on the Roadmaster's territory. He waived that right and filed form 2740-A to preserve his seniority rights as required by Rule 10. Rule 11 reads as follows:

"Rule 11. When forces are increased, senior laid-off employees in their respective grades shall be given preference in employment except that employees in Grade C, Group 1, of the Track Sub-department who may be laid off on account of force reduction will not be notified to return to service under Rule 10 for vacancies or new positions on other than their own section unless they so specify when filing their names and addresses at the time of lay-off."

On November 27, 1957, the parties executed a Memorandum of Understanding interpreting the meaning and intent of Rules 9 (d), 10 and 11. Section 2 of that Memorandum provides as follows:

"A section laborer who, when laid off, elects not to exercise displacement privileges, but instead files Form 2740-A to be recalled to one or more specified sections, will not be recalled to any section or floating gang when forces are increased (except the sections specified) until all employees who have indicated on their 2740-A to be recalled to work anywhere on roadmaster's territory have been recalled and are working."

Petitioner contends that the phrase "except the sections specified" in the Memorandum of Understanding means that Carrier was obligated to assign Claimant to work when Traveling Section Gang #272 worked in the Torrington and Mitchell sections. In its Ex Parte Submission, Petitioner says:

"The Carrier's action in assigning Traveling Section Gang No.

272 to perform routine maintenance work on the territory comprehended in the Torrington and Mitchell sections had the effect of increasing its forces on those sections."

We do not agree. A traveling section gang is what its identification implies. It is designated to travel over the seniority district and perform work in several sections. It is distinguished from a stationary section gang in that it travels over the Roadmaster's territory and is not confined to one section. Traveling Section Gang #272 worked in nine different sections between April 16 and September 30, 1957. Forces in Torrington and Mitchell were not increased when Traveling Section Gang #272 was organized and when it began operating on April 16, 1957. Likewise, forces in those sections were not increased when the traveling gang worked there.

The Memorandum of Understanding states that Carrier is not obligated to recall a section laborer to a floating gang (traveling gang) when a Form 2740-A is executed designating sections to which employee desires to be recalled. There would be no purpose for such a provision if it was the intent of the parties to give it the interpretation urged by Petitioner. A traveling gang must, by the very nature of its title, work in more than one section. If it had been the intent of the parties to give it any other meaning, the Memorandum would have so provided. Since Carrier was not obligated to recall Claimant to the traveling gang, it follows that the forces were not increased when that gang worked in the Torrington and Mitchell sections.

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 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 30th day of June, 1964.