

Award No. 13699

Docket No. MW-13838

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

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(Supplemental)

Nathan Engelstein, 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 violated the effective agreement when on Saturday and Sunday, February 25 and 26, 1961, it failed to call Section Foremen and Section Laborers named below to clear wreck and repair tracks account of derailment near Dawson Springs, Kentucky.

SECTION FOREMEN	Section Laborers	Section Laborers
Tillie Mitchell	W. E. Cunningham	Henry Williams
A. W. Aubrey	Jessie C. Vincent	N. A. Harper
	C. G. Strader	J. C. Hammock
	E. P. Nanny	J. E. Walker
	E. T. Nole	S. L. Abbott
	J. L. Vincent	Delbert Hardison
	B. Evitts	E. Dukes
	R. Bard	J. G. Gibbons
	C. G. McRoy	
	N. R. Evans	

EMPLOYES' STATEMENT OF FACTS: At approximately 12:00 Noon on Saturday, February 25, 1961, a derailment occurred at or near Dawson Springs, Kentucky. This derailment was on the territory under the jurisdiction of Supervisor of Track W. S. Miller, who called all of the employes on his district with the exception of the Claimants.

Two (2) section foremen and thirteen (13) section laborers, who hold no seniority rights on the district where the derailment occurred, were called and used to clear the wreck and repair the tracks. These employes from the foreign district worked from 5:00 P. M. to 10:00 P. M. on Saturday, February 25, 1961, and from 7:00 A. M. to 7:00 P. M. on Sunday, February 26, 1961.

The Claimants were available, fully qualified and of sufficient number

seniority of laborers to a gang and since the claimant employes and the junior employes who were used have their seniority restricted to the respective gangs and territory on which they were employed, it should be abundantly clear why the Carrier fails to either cite or quote Rule 6(b). It should be even more obvious after one considers that this same Rule 6(b) was the subject matter of interpretation in Award 4803, wherein this Division held that work on a section is restricted to those holding seniority therein.

The foregoing make abundantly clear the incongruity of the Employees' position. They argue, on the one hand, that the rights of section men are restricted to their respective gangs. In this instance, they contend that section men—the claimants—should have been used to perform work on another section.

Plainly, there can be only one logical interpretation of Rule 6(b); namely, that section men have no contractual right to be called to perform work on another section.

SUMMARY: The Carrier, in summary, has shown,

- 1.) that the rights of the claimants—section men—were restricted under the agreement, to the sections to which they were assigned;
- 2.) that the work to be performed in this instance was on another section—No. 39;
- 3.) that the claimants, therefore, with one exception, had no contractual right to perform work accruing to Section No. 39;
- 4.) that the one exception, Section Laborer J. E. Walker, could not be reached by the Carrier, and was, therefore, not available on the claim dates.

There has been no violation of the agreement and the claim should be denied.

OPINION OF BOARD: On Saturday, February 25, 1961, at approximately noon, a derailment occurred near Dawson Springs, Kentucky. Dawson Springs is located in the Paducah District and is under jurisdiction of Supervisor of Track, W. S. Miller. Supervisor Miller called Section Gang No. 39 which is assigned to the section where the wreck occurred to perform the necessary work. He also called Section Gangs No. 22, 37, and 38 who are assigned to his district, as well as Section Gangs No. 24 and 26 from another district. He did not, however, use Claimants who are employes assigned to Gangs No. 35 and 36 in his district.

Two Section Foremen and 18 Section Laborers claim that Carrier violated the Agreement when it failed to call them to clear the wreck on February 25 and February 26. They take the position that Rules 3 and 6 confine and restrict seniority rights of employes not only to their respective gangs but also to the supervisory district in which their seniority is applicable. They also argue that since five hours elapsed from the time of the derailment until the employes from the foreign district reported for work and that since after only five hours of work these employes were released with instructions to return at 7:00 A. M. the following day, the work could not be regarded as an

emergency which justified disregard of seniority rights. They urge that it was not necessary to call upon employes in another district while a sufficient number of qualified employes were available in Supervisor Miller's district.

Carrier contends that it had no obligation under the Agreement to use the Claimants to perform the work. Moreover, Carrier argues that in view of the emergency it was within its right to select the forces it deemed necessary.

Rule 6(b) restricts seniority rights to the gang to which Section Laborers are assigned. The only exception occurs when forces are reduced. In such a situation junior laborers of other sections of the district can be displaced. Claimants seek to generalize this rule to give seniority rights to Section Laborers throughout the district to include overtime work and work on rest days. Thus, they urge that as employes in Supervisor Miller's district they have working rights over those employes who were used from the foreign district. Since this rule expressly grants the sole exception of displacement between sections when reductions take place, we cannot confer other seniority rights. This interpretation is in accord with Award No. 11448. Carrier met its contractual responsibility when it used the employes assigned to Gang No. 39 in the section where the derailment occurred. In as much as seniority is confined to the section, Carrier was free to call upon other section gangs within the district under Supervisor Miller or in another district outside of his jurisdiction. We hold the Agreement was not violated.

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

The Agreement of the parties 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 30th day of June, 1965.