

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
THE DELAWARE AND HUDSON RAILROAD CORP.**

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

- (1) The Carrier violated the Agreement when:
 - (a) it permitted Trackman Charles Dupuis to work on the Fort Edward Section on December 21, 22 and 23, 1960, while Trackman Frank Ruby, who is senior to Trackman Dupuis, was furloughed:
 - (b) it assigned Trackman Charles Dupuis to work 18½ overtime hours on January 1 and 2, 1961 while Trackman Frank Ruby, who was assigned to the same section, who is senior to Trackman Dupuis and who was available, was not called to perform said overtime service:
 - (c) it permitted Trackman John F. Arcuri, who is junior to Trackman Frank Ruby, to work on the Whitehall Section on January 9 and 10, 1961, and furloughed Trackman Frank Ruby from the Fort Edward Section effective January 9, 1961:
 - (d) it permitted Trackmen Francis E. Ruby and Alex Vanguilder, who are junior to Trackman William I. Guitar, to work on the Granville section from January 9 to February 3, 1961 (both dates inclusive) and furloughed Trackman William I. Guitar effective January 9, 1961.
- (2) The Carrier now be required to reimburse Claimants Frank Ruby and William I. Guitar for the exact amount of monetary loss each suffered as a result of the violations set forth in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: Trackmen Charles Dupuis and Frank Ruby were on furlough prior to December 21, 1960. On December 21,

accrues if he fails to do so. This is only right and proper. In the event of reduction of forces it could happen that a junior employe might be working at a point up to 100 miles away. It would not be realistic to expect that carrier could require that the senior furloughed employe displace such a junior employe, necessitating his working so far removed from his point of residence. Therefore, the rules are permissive, it is up to the employe to exercise his displacement rights, or not to do so, as he sees fit. If any employe fails to take advantage of these rules and does not exercise his rights to displacement, he cannot be heard to complain if a junior employe is allowed to continue to work in another gang in the same seniority district. Having obtained, by agreement, the right to displace if he chooses to do so, the employe therefore assumes a corresponding responsibility — it is up to him to exercise those rights — they cannot be exercised for him.

The current agreement between the parties involved herein has been in effect since November 15, 1943. During all of this period it has been the practice throughout the railroad for trackmen who are being furloughed to contact the Track Supervisor or Roadmaster to determine if any displacements are available to them. Upon being informed of their rights to displace and the locations at which displacements are available to them, they then make a decision and if they so desire, effect their displacement according to the applicable rules. It is totally unrealistic to expect that each individual Section Foreman would have current knowledge of the seniority date of each employe working on a seniority division, and therefore be in a position to tell an employe being furloughed whether or not there are junior employes working on any other section on the seniority division. In this connection, the attention of the Board is called to the fact that the Organization admits that claimants Ruby and Guitar "inquired from his foreman as to whether or not there were any junior trackmen working on the Saratoga Division * * *." This is as far as they went, and it is the position of the Carrier that they did not make sufficient effort to exert their seniority to now be heard to complain. In further support of the position of the carrier, the Board is respectfully referred to the fact that Francis E. Ruby, furloughed from Fort Edward on January 9, 1961, determined that a displacement was available to him at Granville and exercised such displacement on January 18, 1961. He took positive action to assert his seniority, and his displacement was, of course, allowed.

It is the position of the Carrier that the claims involved in Items 1 through 4 of this dispute are without merit and should be denied because of the emergency situation involved. It is our further position that the employes involved having failed to affirmatively assert their seniority rights in the manner which has been followed since November, 1943, that claims involved in Items 5 through 8 of this dispute are also entirely without merit and should be denied.

OPINION OF BOARD: This dispute concerns two issues: one, stated in paragraphs (a) and (b), of the claim involves the use of a junior Trackman to perform work while the senior Trackman was furloughed and two, found in paragraphs (c) and (d), turns on whether Carrier failed to permit Claimants to exercise displacement rights.

Trackman Charles Dupuis was recalled from his furlough to perform the work of removing snow at Fort Edward on December 21, 22, and 23, 1960. Again, on January 1, and 2, 1961, he was called for service for which he was paid on an overtime basis.

Senior Trackman Frank Ruby claims that under Rules 2, 3, and 4, he should have been called to perform the work on December 21, 22 and 23, 1960 and January 1 and 2, 1961.

Carrier maintains that Frank Ruby was not entitled to work on these days because Rule 3(b) restricts the seniority rights of Trackman Ruby to the gang from which he was furloughed. It also alleges that the severe snow storms created an emergency which necessitated employment of additional help for snow removal. Since Mr. Dupuis lived in close proximity, about two and a half miles from Fort Edward, he was called in preference to Mr. Ruby who lived twenty-two miles away.

With reference to the second issue of the dispute, these are the pertinent facts: Trackmen Frank Ruby and William I. Guitar who worked on the Fort Edward Section were notified that they were to be furloughed effective January 9, 1961. They inquired of the foreman if there were any junior Trackmen in their division that they could displace. They were advised that there were none; but, subsequently they learned that in their seniority division Junior Trackman John F. Arcuri worked on January 9 and 10, 1961, and Junior Trackmen Alex Van Guilder and Francis E. Ruby worked on January 9, 1961 to February 3, 1961.

Claimants Frank Ruby and William I. Guitar take the position that Carrier had an obligation and responsibility to furnish correct information concerning the employment status of the junior Trackmen when this information was requested in accordance with Rule 3(g).

Carrier, on the other hand, contends that the Claimants did not exercise their displacement rights under Rule 3(e) and that it is the practice in compliance with Rule 3(g) for the employees to contact a supervisory officer, not the foreman, on reassignment when forces are reduced in order to determine if any displacements are available to them in accordance with their seniority.

Rule 3(b) is pertinent in the consideration of the claims in paragraphs (a) and (b). This Rule states that seniority rights of Trackmen are restricted to the gang to which they are assigned except when forces are reduced. In the case of reduction of forces, they may exercise displacement rights anywhere within their seniority division. Claims (a) and (b) concern an increase in forces to meet the problem of snow removal from a storm. Trackman Frank Ruby was furloughed from Gang 101 with headquarters at Mechanicville, but the additional forces were needed at the Fort Edward Section. Under Rule 3(b), therefore, his seniority rights were restricted to his gang at Mechanicville. Award 11448 in interpreting a rule similar to 3(b) also held that in reduction of forces, seniority rights are confined to the employees' respective gangs.

Furthermore, in view of the emergency arising from the snow storm, Carrier was justified in assigning the employees it deemed necessary in the exercise of its managerial discretion.

In accordance with Rule 3(b), Trackmen Frank Ruby and William I. Guitar had the right to exercise their seniority to displace junior employees in the division. They made an effort in this direction by inquiring of the foreman if any junior employee was working on the division. When given a negative answer, they did not follow up by exercising displacement rights under Rule 3(e). Their failure stemmed from the misinformation obtained from the foreman. Claimants' action, however, was in good faith and therefore, they were entitled to

assistance in reassignment in accordance with their seniority rights from a supervisory officer as provided for in Rule 3(g).

Although Carrier claims the existence of a practice of Trackmen who are being furloughed to contact the Track Supervisor or Roadmaster to determine if any displacements are available to them, there is, evidence that on some occasions a foreman did telephone a supervisory officer to secure displacement information for employees.

We find that Claimants gave reasonable indications that they desired to exercise their rights of displacement but receiving misinformation and no assistance from the Carrier, they were deprived of an opportunity to displace junior employees.

For the foregoing reasons, claims (a) and (b) are denied; and claims (c) and (d) are sustained. Accordingly, Carrier shall reimburse Claimants for their monetary loss for violations as set forth in claims (c) and (d).

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.

AWARD

Claims (a) and (b) are denied, and claims (c) and (d) are sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of September 1965.