



Award No. 15385

Docket No. MW-15959

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

ATLANTA & WEST POINT RAIL ROAD COMPANY

THE WESTERN RAILWAY OF ALABAMA

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

(1) The Carrier violated the Agreement when it refused to permit B&B Laborer Ralf Miles to displace B&B Laborer Willie Timmons in B&B Gang No. 1 effective October 16, 1964.

(2) B&B Laborer Ralf Miles be reimbursed for all wage loss resulting from the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: On October 15, 1964 the claimant was a furloughed B&B laborer. He had established seniority rights in that class as of October 25, 1948.

The claimant learned that B&B Laborer Willie Timmons was employed on B&B Gang No. 1. Mr. Timmons held seniority as a B&B laborer as of June 11, 1961. The claimant went to the camp cars of B&B Gang No. 1 after the close of work on October 15, 1964, and asked B&B Foreman Fincannon if he could go to work in the gang. He was advised there was no opening. B&B Laborer Timmons continued to work in B&B Gang No. 1 until the close of work on Monday, November 23, 1964. The claimant remained unemployed.

Inasmuch as the subject rules violation was the third time that the claimant had been deprived of the opportunity of working in accordance with his established seniority rights, he contacted his Local Chairman. Claim was timely and properly presented and handled at all stages of appeal up to and including the Carrier's highest appellate officer.

The Agreement in effect between the two parties to this dispute dated July 1, 1956, together with supplements, amendments, and interpretations thereto is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: The Atlanta & West Point Rail Road extends from Atlanta, Georgia, to West Point, Georgia, a distance of 86 miles. The Western Railway of Alabama main line extends from West Point,

Employee, and, as such, was or should have been fully conversant with current working agreements between Carrier and his Organization.

(Exhibits not reproduced.)

OPINION OF BOARD: The claim alleges that Carrier refused to permit Claimant to displace a junior laborer, effective October 16, 1964. Claimant stopped by the camp cars of B&B Gang No. 1 on the evening of October 15, 1964 and conversed with the foreman concerning the possibility of work with the gang.

Petitioner contends that Claimant asked the Foreman if he could go to work on the gang and was advised there was no opening, despite the fact that a junior laborer, working on the gang, was subject to displacement by Claimant.

Carrier denies that Claimant made any attempt to displace the junior laborer and merely inquired of the foreman if there was an opening. Carrier contends that the foreman advised Claimant that he did not have an opening at that time and that Claimant did not indicate in any way his desire to exercise seniority by displacing the junior employee.

The instant claim was filed on November 18, 1964. Immediately thereafter, Carrier reduced the junior laborer to furlough status.

The issue for determination is whether Claimant's inquiry concerning employment on October 15, 1964 constituted an attempt to exercise seniority over the junior laborer. Carrier offered in evidence a written statement of its foreman, which in part stated that "Miles did not attempt to exercise his seniority on A&WP-WofA Bridge Gang." However, said foreman's response to Claimant's inquiry concerning an opening on the gang during their conversation on October 15, 1964 was equivocal and misleading. Indeed, it is not surprising that Claimant failed to pursue the possibility of invoking his seniority rights with the foreman at that time.

The record does not disclose any particular procedure to be followed by furloughed employees in exercising their seniority rights and it is reasonable to assume that a verbal demand would be sufficient. The foreman should have recognized the possibility of Claimant's invoking his seniority and advised him concerning his rights, which he did not do during their conversation.

Carrier further maintains that the foreman also is covered by the Agreement between the parties and that Carrier should not be held responsible for his violation of the Agreement. We do not agree as the foreman was the authorized Agent of the Carrier. It is well established that a Carrier cannot evade responsibility for acts of its agents in the absence of evidence that they lacked the requisite authority. Awards 10527, 11573 and 12309.

Under the circumstances, the claim must be sustained. Reparation should be limited to any monetary loss suffered by Claimant from October 16, 1964 through November 23, 1964.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 the Agreement was violated.

AWARD

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1967.