

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Thomas J. Kenan, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

SOO LINE RAILROAD COMPANY

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

(1) The Carrier violated the Agreement when it reduced Section No. 70 (Portal) to foreman, assistant foreman and one sectionman from October 12 through October 26, 1964 (Carrier's file 800-20-38).

(2) Sectionman John Soiseth be allowed eleven (11) days' pay (80 hours) at his straight-time rate because of the violation referred to in part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: Prior to October 10, 1964, the claimant was regularly assigned as a sectionman on Section No. 70 (Portal) which is a Line of Road Section on the territory from Minneapolis to Portal. The claimant's assigned work week extended from Monday through Friday (Saturday and Sunday being rest days). He was regularly assigned to work eight (8) hours per day.

Effective at the close of the day's work on October 9, 1964 the claimant's position was abolished, thereby reducing the consist of said section crew to a section foreman, an assistant section foreman and one sectionman. Effective as of October 27, 1964, this section crew was increased by one sectionman and thereby restored the complement of this crew to two (2) sectionmen. An employe senior to the claimant was assigned to the restored position.

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, 1955, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: This dispute involves the application of a minimum section crew consist agreement entered into with the Brotherhood on June 2, 1938. This agreement, designated "Memorandum of

assistant and one laborer — regardless of the season — and additional laborers employed as circumstances warranted. Usually, but not always, two or more laborers worked on this crew during the heavier maintenance months from spring until fall.

Thus, during the year 1964, Foreman Arthur Kling, Assistant Foreman C. A. Peterson and Laborer L. Huff, comprised the whole crew during January, February and March. In April Clarence Burau replaced Huff, Laborer George Smith joined the crew for the first week, and Claimant John Soiseth (whose home section is No. 69, Faxton, North Dakota) replaced Smith on April 6. Messrs. Burau and Soiseth continued working together as laborers on the Portal section until June 16, 1964.

From the 17th of June until August 3, only Burau was carried as a laborer on the Portal crew.

Assistant Foreman Peterson bid off his job and was assigned the foreman's position at Kenmare effective July 13, 1964. He worked the assistant foreman's position on July 1 and 2 and took the 5th through the 9th as vacation. Ellsworth Fitzgerald drew the Portal assistant foreman's position effective July 29, but did not physically occupy the position until August 10.

During this period only Foreman Kling and Laborer Burau worked on the Portal section from July 5 until August 3. Laborer George Kremer also worked on the crew the 3rd. On August 4 and 5 only Foreman Kling and Burau worked and on the 6th they were joined by Laborer George Smith.

Burau left the crew after the 7th of August and from the 10th of August through September 4, only Foreman Kling, Assistant Fitzgerald and Laborer Smith worked the Portal section.

On September 8, Soiseth was added to the crew and on the 14th Burau was added. The Portal crew continued to carry five men (including the foreman and assistant) through October 9, when Smith and Soiseth were furloughed. On October 27, Laborer Kremer was added.

It is for the period between October 12 through October 26 only that Claimant Soiseth seeks payment based on the alleged violation of Special Memorandum of Agreement No. 3.

Copies of schedule agreement between the parties, effective July 1, 1955, and supplements and amendments thereto are on file with the Board and are made a part of this record by reference.

OPINION OF BOARD: Effective October 10, 1964, the Claimant's position of Sectionman on Section No. 70 was abolished by the Carrier, thereby reducing the Section No. 70 crew to a section foreman, an assistant section foreman and one sectionman. On October 27, 1964, this section crew was increased by one sectionman, restoring it to its previous consist of a foreman, an assistant section foreman, and two sectionmen.

The Employes contend that the above action of the Carrier, from October 10 until October 27, violated the following terms of the Parties' Memorandum of Agreement No. 3:

"MINIMUM NUMBER OF SECTION MEN TO BE EMPLOYED
ON LINE OF ROAD SECTIONS

* * * * *

Minneapolis to Portal
2 men Apr. 1st to Oct. 31st
1 man Nov. 1st to Mar. 31st"

The Carrier contends that the term "Section Men" as employed in the above Memorandum of Agreement, is a generic term, embracing all persons in a section gang under the section foreman. The Employes contend the term "Section Men" means sectionmen and does not cover assistant section foremen.

The Board finds, upon reading the entire Agreement and the Memorandum of Agreement No. 3, that the term "Section Men," as employed here, was intended by the contracting parties to embrace all persons in a section gang under the section foreman. Accordingly, the claim must be denied.

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 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 the Memorandum of Agreement No. 3 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 27th day of October 1967.