

Award No. 18373
Docket No. MW-18593

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
SOUTHERN PACIFIC TRANSPORTATION COMPANY
(Pacific Lines)

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

(1) The Carrier violated the Agreement when it refused to transfer Track Laborers Antonio S. Zavala and Nemisio Avila from the System Steel Gang to their home seniority district. (System file MofW 176-42.)

(2) Track Laborers Antonio S. Zavala and Nemisio Avila be transferred to their home seniority district and that each of them be compensated for all wage loss suffered and reimbursed for expenses incurred because of the violation referred to within Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: Claimant Zavala holds track laborer's seniority dating from September 19, 1963, and Claimant Avila holds track laborer's seniority dating from September 24, 1963. Their "home seniority district," upon which said seniority was established, is the Eastern District of the Tucson Division.

Sometime prior to the period involved here, the claimants, having insufficient seniority to retain a position on their home seniority district, were assigned to a System Steel Gang which is assigned to work on a system wide basis. Employes assigned to such system gangs retain and continue to accumulate seniority on their home seniority district in accordance with the provisions of Rule 5(d) which reads:

"SYSTEM STEEL GANGS

(d) Employes assigned to the Track Sub-department System Steel Rail Laying Gang and the Bridge and Building Sub-department Steel Gangs shall retain and accumulate seniority in their respective sub-departments and classes on their home seniority districts."

By letter dated June 26, 1968 (Carrier's Exhibit C), Carrier's Engineer, Maintenance of Way and Structures-System, denied the claim.

By letter dated July 1, 1968 (Carrier's Exhibit D), Petitioner's General Chairman gave notice that the claim would be appealed.

By letter dated July 18, 1968 (Carrier's Exhibit E), Petitioner's General Chairman appealed the claim to Carrier's Assistant Manager of Personnel; and by letter dated January 30, 1969 (Carrier's Exhibit F), the latter denied the claim.

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier moves that the Claim be dismissed on the grounds that the Claim submitted to this Board is at variance with the Claim presented on the property. From our study of the record we find that the Claim before us is in substance the same as that presented on the property. For reasons stated in Award No. 14246 the motion is DENIED.

Claimants Zavala and Avila hold seniority as Track Laborers from September 19, 1963, and September 24, 1963, respectively. Their "home seniority district," in which their seniority was established, is the Eastern District of the Tucson Division.

Sometime prior to the period here involved Claimants, not having sufficient seniority to retain a position on their home district, were assigned to a System Steel Gang which is assigned to work system wide.

It is not disputed that after Claimants' assignment to the System Steel Gang—and before April, 1968—each of them requested that he be transferred back to his home seniority district at the first opportunity when a vacancy occurred or when forces were increased. Petitioner cites the following Rules, emphasis ours, as supporting a vested contractual right in each Claimant to be transferred, as requested, upon the occurrence of either of the stated contingencies:

"SYSTEM STEEL GANGS.

5(d) Employes assigned to the Track Sub-department System Steel Rail Laying Gang and the Bridge and Building Sub-department Steel Gangs shall retain and accumulate seniority in their respective sub-departments and classes on their home seniority districts."

"TRACK LABORERS AND HELPERS.

17(d) Track laborers or helpers having one year or more seniority may apply to the Division Engineer for a transfer to any other gang on their home seniority district, and shall be transferred at the first opportunity when the force is increased or vacancy occurs on the desired gang. A track laborer so transferred shall establish a seniority date in the gang into which transferred the same as his seniority date in the gang from which transferred, and shall forfeit seniority in the latter gang."

"VACANCIES TO BE FILLED.

16(b) New employes shall not be brought into the service to fill new positions or vacancies in a class on a seniority district until employes in the service and furloughed employes in that class on that seniority district have been given an opportunity to take the positions."

Subsequent to Claimants' requests for transfer to their home district Carrier, in April, 1968, increased the force on the Eastern District of the Tucson Division by hiring four new employes as Track Laborers.

Petitioner contends that Carrier's failure to honor Claimant's request when it had need of additional employes on their home district, in April, 1968, violated the Agreement.

Carrier's defense is that the Rules cited by Petitioner are general rules from which employes assigned to the System Steel Gang are excepted by virtue of an Agreement executed March 6, 1958, which in material part, with emphasis ours, reads:

It is hereby mutually agreed:

"(a) The company may establish a track gang, to be known as 'System Steel Gang,' with the privilege of using the employes assigned thereto on all Divisions.

(c) Employes assigned to the "System Steel Gang" shall retain and accumulate seniority on their home Divisions and in their respective Sub-departments. Employes acquiring displacement rights may exercise such rights on their home Divisions and within their respective Sub-departments as provided by Rules 4, 5, 7, 10 and 19 of the current agreement.

(h) Employes in the exercise of seniority shall be governed by the Rules of the current Agreement for various Classifications."

Further, Carrier argues that that part of Rule 17(d), emphasized, which reads:

"Track laborers or helpers having one year or more seniority may apply to the Division Engineer for transfer to any other gang on their home seniority district. . . . (Emphasis ours.)

It applies only to those employes assigned to gangs within a single seniority district; and, reference to "other gang" on the district implies that the transfer is from a gang on the district.

It is to be noted that paragraph (c) of the March 6, 1958 Agreement, is applicable to all "Employes assigned to the 'System Steel Gang.'"

It is self evident from a reading of paragraphs (c) and (h) of the March 6, 1958, Agreement, *supra*, that Carrier's proffered defenses are without merit.

We find that Claimants were "employes in the service" with continuing seniority rights in "their home Divisions" within the contemplation of Rule 16(b); paragraph (c) of the March 6, 1958 Agreement; and Rule 5(d). We will sustain paragraph (1) of the Claim.

Petitioner adduced no evidence on the property to support its prayer in paragraph (2) of the Claim for monetary damages. Consequently, paragraph (2) of the Claim, to that extent, must be dismissed for failure of proof.

We will sustain the prayer in paragraph (2) of the Claim that Claimants, at their request, will be transferred to their home seniority district — honoring their seniority standing and entitlements in that district in all respects.

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 Carrier violated the Agreement as alleged in paragraph (1) of the Claim.

That paragraph (2) of the Claim must be dismissed for failure of proof.

AWARD

Paragraph (1) of the Claim sustained.

Paragraph (2) of the Claim sustained in part and dismissed in part as prescribed in the Opinion, *supra*.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of January, 1971.