Award No. 18574
Docket No. MW-19063

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William M. Edgett, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

THE ILLINOIS CENTRAL RAILROAD COMPANY

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

(1) The Carrier violated the Agreement when ,instead of calling
(1) The Carrier violated the Agreement when, instead of calling used section laborers from the Clinton and Fulton sections on February 7, 1969; a machine operator and a track inspector on February 14, 1969, a section foreman on February 15, 1969 and a machine operator on February 17, 1969 to perform track laborer's work on the Wickliffe Section. (System File SLS-52-T-69/Case 616).

(2) Track Laborers G. A. Poole and P. D. Gordon each be allowed thirty-two hours' pay at their straight time rate because of the violations referred to within Part (1) of our claim.

EMPLOYES' STATEMENT OF FACTS: Claimants G. A. Poole and P. D. Gordon are furloughed section laborers. Prior to being murlougghed, they were assigned to Section No. 74 at Wickliffe, Kentucky with a work week extending from Monday through Friday. (Saturdays and Sundays are designated rest days). The claimants did not possess sufficient seniority to exercise displacement rights elsewhere within the Supervisor's district and, therefore, filed their names and addresses in writing with the Division Engineer, with a copy to their Local Chairman in accordance with Rule 15(a) which reads:

"An employe laid off or displaced and not working in other classifications covered by this agreement desiring to retain his seniority must, within 15 calendar days, file his name and address in writing with the Division Engineer with copy to Local Chairman and must renew same in the months of January, April, July, and October, also notify the same individuals of any change of address. If the first filing within 15 days comes within one of the months mentioned, the next filing will be the first month of the next quarter."

During February 1969 (as hereinafter described) section laborer's work on Section 74 was assigned to section laborers from adjoining section territories and to employes regularly assigned within other classifications and who, therefore, had no contractual right thereto.

alleged loss of eight hours' work. There is nothing in the record to justify pay for two employes because one employe worked eight hours.

On February 15, 1969, a section foreman filled and lit switch heaters during a snow storm. Switch heaters are metal containers which are filled with a flammable material (i.e., kerosene) and placed near the switch points. When lit, they are designed to radiate sufficient heat to melt snow and ice which could impede the operation of the switch. The work performed by the section foreman consisted of merely pouring the flammable material into the heater and igniting the material with an open flame. The same unskilled operation was performed by a machine operator on February 17, 1969 and has been performed by numerous employes belonging to several crafts and classes throughout the years. Performance alone does not entitle the members of a class to the exclusive right to perform work.

The union alleges that three laborers from the Clinton section and one laborer from the Fulton section performed work on the Wickliffe section on February 7, 1969. The union has not named these employes or described the work which they allegedly performed. The company has investigated and has determined that no foreign section crews performed any work on the Wickliffe section. The Board should follow the long line of Third Division Awards which dismiss claims of this nature because the union has failed to file a specific claim. See Awards 12502, 12848, 13028, 15536, 16675, 16676 and 17740 as recent examples upholding this principle.

The correspondence is attached as Company's Exhibit B.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimants are track laborers who were furloughed from Section No. 74. They allege that Carrier should have recalled them to perform work which they allege was improperly assigned to other employes while they were furloughed.

The claims are seperable and will be so discussed. First, claimants allege that three section laborers from another section unloaded track equipment on section No. 74. The difficulty with this claim is that the record fails to support the facts which are alleged. Carrier has denied all knowledge of such an incident. Claimants have not shown, by evidence with probative value, that it did, in fact, occur. Therefore this part of the claim must be denied.

The second incident occurred on February 14, 1969, when a track inspector and a machine operator were assigned to tamp a switch on section No. 74. Carrier, by its letter of August 15, 1969 to the General Chairman, recognized that the work was performed as claimed.

Carrier's defense to the claim, reduced to its essentials, is that since the machine operator and track inspector hold seniority in the same section, albeit not in the laborer's classification, they may perform any work performed by laborers with impunity. In other words Carrier says, in effect, that an employe of another classification could displace a laborer by performing such work full time, as long as Carrier paid the rate required by the Composite Service Rule (Rule 48).

The Board cannot agree with this contention. The Composite Service Rule is a pay rule and while the seniority provisions of the Agreement must be

interpreted with it in mind, it does not override their normal meaning. They clearly provide for seniority by classification within a seniority district. Carrier would have the Board give no meaning to the agreement made by the parties for seniority by classification.

In a slightly different context, but in a case which is opposite, it was said:

> "Award No. 5261 (Referee Robertson)
>
> It is clear that this rule restricts seniority of section men to the gang to which they are assigned except in force reduction. Obviously that seniority must attach to certain work, otherwise that provision of the Agreement would be meaningless. It follows that a class of work even though not specifically described in this rule nor elsewhere in the Agreement was contemplated by the parties as being subject to the operation of that seniority. Inasmuch as the seniority is confined to the section, it is the Maintenance of Way work in the section to which it applies. It is from this line of reasoning that we evolve the general principle that work on a section belongs to the regularly assigned section foreman and his crew. (See Awards 3627, 4803, 5142.) By the very nature of Maintenance of Way work, however it is clear that the rule is not absolute. Generally it is recognized that in emergencies and when a large scale project is undertaken, the regularly assigned section crew may be argumented by extra crews and that adjoining section crews may be mixed with the regularly assigned crews to accomplish the work which must be done ** ** *."

Rule 6, Force Reduction, provides for reduction by classification. Section (e) of that rule provides that an employe with 24 months or more in a higher classification may displace a laborer **"with less seniority on the Supervisor's District."** (Emphasis ours.)

An award sustaining Carrier's position in this case would render this important provision of the Agreement meaningless. It would mean that an employe without sufficient seniority to displace a laborer in the manner prescribed by Rule 6 could effectively displace him, provided only that the Carrier complied with the Composite Service Rule.

The Agreement was not intended to permit such a result. Carrier's position that the Composite Service Rule overrides the seniority provisions of the Agreement is incorrect. That part of the claim alleging a violation on February 14, 1969 is sustained.

The third claim alleges violation on February 15 and 17, 1969 when other employes filled switch heaters. Carrier has defended these claims on different grounds.

On February 15th the work was performed by a section foreman and Carrier raises the same defense discussed above. Its reception by this Board is also the same. Absent other factors the section foreman may not be assigned work of the laborer's classification while laborers are on furlough and available to perform such work. Carrier has also stated that this "unskilled operation" * * * "has been performed by numerous crafts and classes throughout the years." We will sustain the performance of this same work

by another classification, in other circumstances, below. Here, however, when faced with this record, the Board must apply the reasoning given for sustaining the second claim and sustain the claim made because the section foreman filled switch heaters on February 15, 1969. As indicated, the claim for February 17, 1969 is in a different posture. The record clearly shows that it was snowing on that date and that immediate action was required.

Safety is not to be compromised. Carrier may well have an obligation to attempt to call employes before assigning work to available employes in other factual situations. The Board holds that on this record the Carrier did not violate the Agreement by failing to make the attempt or by assigning the work to an available employe in the circumstances then present.

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 Agreement was violated to the extent shown in Opinion.

AWARD

Claim sustained to the extent shown in Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 28th day of May 1971.

CARRIER MEMBERS' DISSENT TO AWARD NO. 18574,
DOCKET NO. MW-19063
(Referee Edgett)

Award 18574 correctly holds that the Petitioner failed to show by evidence of probative value, that laborers from other sections performed work on Section No. 74 and properly denied the claim for February 7, 1969.

The Award is, however, in palpable error in holding, in effect, that employes of a higher class within a seniority district may not perform work of a lower class within the same district. The Petitioner failed to prove that laborers had an exclusive right to he performance of the work complained of, and this Board has ruled in numerous instances in disputes involving practically all crafts that classification rules such as Rule 2 are not reservation-of-work rules, and that employes in a higher rank or class may perform

work of a lower rank or class. See, for example, Awards 13083, 13198, 13357 and 17360 involving Maintenance of Way employes; Awards 12668, 12949, 12950, 14399 and 14488 involving Signal employes; Awards 16934, 15463, 13220, 12365, 7167 and 6140 involving Clerical employes, among others. The well-established precedent as enuciated in the cited Awards was simply ignored in Award 18574 and the Referee relies upon Award 5261 which covered an entirely different type of dispute.

Furthermore, Rule 48 of the Agreement clearly recognizes that employes may be used to perform work in different classes.

Based on the record, the rules of the Agreement and precedent Awards of the Board, the entire claim should properly have been denied, and we vigorously dissent to those portions of the Award holding that the Agreement was violated.

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