

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22324
Docket Number MW-22229

Abraham Weiss, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(The Denver and Rio Grande Western Railroad Company

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

(1) The Agreement was violated when the Carrier used employees junior to Claimant R. N. Westbrook for overtime service on July 26, 27, 28, 29, 30, August 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 23, 24, 25, 26 and 27, 1976 (System File D-14-76/MW-13-76).

(2) Claimant Westbrook shall now be allowed 27 hours of pay at his time and one-half rate."

OPINION OF BOARD: The claim is that Carrier violated the Agreement when it failed to assign Claimant Westbrook, a B&B carpenter on B&B Gang No. 6021, overtime arising on 27 dates set forth in the Statement of Claim.

It is undisputed that employees Brians and Johnson, both assigned to B&B Gang No. 6021, were junior in point of seniority standing to Claimant Westbrook.

Carrier denies the claim on the basis that no rule of the Agreement provides that the senior employee will be given preference for overtime work.

Petitioner, during the course of progressing this dispute on the property and in its submission to this Board, has changed the basis or rule upon which it relies to support its case. In submitting the claim to the Division Engineer, Petitioner cited Rule 4 ("Classification Rule") of the parties' agreement. In its further appeal to the highest officer of the Carrier designated to handle claims, and in conference with such officer, Petitioner cited only Rule 6 ("Establishment of Seniority"). In its submission to us, Petitioner relies on Rules 5 ("Seniority Districts"), 8 ("Seniority Rosters") and the aforementioned Rule 6 in support of the claim.

Carrier challenges Petitioner's resort to Rules 5 and 8 inasmuch as they were never cited nor discussed on the property during the processing of the claim. Carrier also challenged Petitioner's reliance on Rule 6 as having no bearing on the factual circumstances of this dispute.

The question of whether seniority is to govern in the assignment of overtime work has been decided in three recent Awards of this Division involving the same parties, the same agreement, and a similar issue. Consistent with the findings in these Awards (Nos. 21421, 21545, and 21757), it is the opinion of this Board that once Carrier decided to use B&B carpenters assigned to B&B Gang No. 6021 to perform overtime service, Carrier was required to assign said overtime to Carpenters in Gang No. 6021 on the basis of their seniority. Said Board findings in the cases listed supra were based upon a violation of the Parties' Agreement Rule 4.

As we have previously indicated, Petitioner placed reliance on Rule 6 in its discussions with Carrier's top official having authority to decide grievances. The three Awards previously referred to, covering the same parties, were predicated upon a finding that Rule 4 was violated. Accordingly, this Board cannot find that Rule 6, as alleged by Petitioner, is compatible with the previous Awards rendered involving these same parties on the question of seniority in overtime assignments and, therefore, must dismiss the claim for lack of the proper rule support.

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 Claim be dismissed for lack of Rule support.

Award Number 22324
Docket Number MW-22229

Page 3

A W A R D

Claim dismissed in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A.W. Pauler*
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1979.