

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23046
Docket Number MW-22905

George S. Roukis, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees
{ Southern Pacific Transportation Company
{ (Pacific Lines)

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

(1) The Agreement was violated July 25, 26, 27, 28, 29, August 1, 2, 3, 4, 5, 8, 9 and 10, 1977 when track forces from the Western Seniority District were used to perform work on the Eastern Seniority District (Carrier's File MofW 148-424).

(2) Messrs. M. C. Crabtree, Z. J. Blackshear, R. F. Elias, J. S. Villilobos, R. F. Roacha and R. L. Foose each to be allowed thirteen (13) days' pay at their respective straight time rates because of the afore-said violation."

OPINION OF BOARD: Claimants contend that Carrier violated the Agreement, particularly Rules 5(b) and 17(b) when it assigned Western Seniority Extra Gang No. 6 to perform track surfacing work on the Eastern Seniority District of the Sacramento Division. The disputed work was performed on July 25, 26, 27, 28, 29 and August 1, 2, 3, 4, 5, 8, 9 and 10, 1977. The relevant part of Rule 5(b) and the full text of Rule 17(b) will be quoted hereinafter for ready reference.

Rule 5(b) provides that:

"Seniority rights of employees in the B&B Water Service and Track Sub Departments shall be restricted to districts having boundaries as follows:"

The Sacramento Division wherein this dispute arose is divided into a Western and an Eastern District.

Rule 17(b) reads:

"Transfers - Program Work. The Management and the General Chairman may agree to transfer employees from one seniority district to another seniority district for the purpose of construction and completion of program work. Employees so transferred shall not establish seniority on the seniority district to which transferred nor suffer loss of seniority on their home district, neither will

"they be transferred to another seniority district unless they so desire. Such transferred employees shall be furnished advertisement and assignment notices issued on their home seniority district. When such transfers are made the Carrier shall furnish transportation to and from the home district."

Carrier, contrariwise, disputes Claimants' position and asserts that the claim relative to the July 25, 26 and 27 dates was procedurally invalid, since it was not presented in timely fashion as per the requirements of Rule 44(a). In addition, Carrier contends that Rule 17(b) (Supra) does not require the General Chairman's acquiescence to transfer employees from one seniority district to another seniority district, since this would restrict Carrier's ability to perform needed program work. It argues that the word "may" in the context of this provision does not presuppose a condition precedence decision sequence, but connotes possibility and a presumptive consultative relationship. Moreover, it asserts that Claimants' did not adduce persuasive decisional holdings that construed these Rules in a manner supportive of their position, or alternatively, justified by the meritorious arguments that they were entitled to monetary compensation, if the Agreement were found to have been violated.

In our review of this case, we concur with Carrier that the claim is procedurally defective with respect to the claimed dates of July 25, 26 and 27. We find that each date was a separate occurrence that must be separately tolled within the time limits of Rule 44(a). Carrier challenged the timeliness of the three dates which were not refuted by the Organization during the handling on the property. We do find that the other claimed dates beginning with July 28 are valid and properly before this Board.

Correlatively, the record demonstrates that Rule 17(g) was violated when Carrier assigned the Western Seniority Extra Group 6 to perform this work, notwithstanding, the Organization's prior verbal denial on July 18, 1977 that it was opposed to such movement. The General Chairman's declination did not extend to the employees on the Eastern Seniority District, particularly Gang 1. There was no emergency present and the Organization was within its Agreement rights under these conditions to deny such request. Contrary to Carrier's interpretative contentions that the wording in Rule 17(b) does not require the General Chairman's permission or acquiescence to transfer employees from one seniority district to another, the Rule does not

similarly vest Carrier with the unfettered right to disregard the General Chairman's denial, except in an emergency. In fact, Rule 5(b) restricts the employees seniority to their assigned districts unless the exceptions provided for in Rule 17(a) and (b) are appropriately observed. It may well be that a cursory glance of Rule 17(b), especially the first sentence containing the word "may", implies possibility as argued by Carrier, but that is not the clear and obvious intent of this provision when Rules 5(b) and 17 are judicially read as an interrelated and conceptual whole. Rule 17(b) requires mutuality of assent when employees are transferred from one seniority district to another and Carrier technically violated the Agreement when it effectuated the contested transfer. In Third Division Award 5413, we held in pertinent part that:

"This Board has held numerous times that in the absence of rules in agreements clearly to the contrary, seniority rosters by districts prevent Carrier from turning the work of those on one district seniority roster over to those of another even if the employees concerned are covered by the same agreement."

We find this holding on point with this dispute. Based on this finding and the persuasiveness and relevancy of our decisional law in Third Division Awards 21678 and 22374, we find no plausible reason for denying the monetary portion of the claims, except for the excluded dates previously identified herein.

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.

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Claim sustained to the extent expressed in the Opinion

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 14th day of November 1980.