

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Ida Klaus, Referee

Award Number 24520
Docket Number MW-24375

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employees
(Seaboard Coast Line Railroad Company

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

(1) The Agreement was violated when Section Force 6023 from the Atlanta and Waycross Divisions Seniority District was used to perform work on the Jacksonville and Tampa Divisions Seniority District on June 9 and 12, 1979 [System File C-4(36)-JAX Div./12-14(80-32) G].

(2) Because of the aforesaid violation, Section Foreman C. A. Wheeler and Trackman M. C. Copeland shall each be allowed eight (8) hours of pay at their respective straight-time rates and nine (9) hours of pay at their respective time and one-half rates; Trackman R. McCray, Jr. shall be allowed eight (8) hours of pay at his straight-time rate and one (1) hour of pay at his time and one-half rate and Trackman S. Holmes shall be allowed eight (8) hours of pay at his time and one-half rate."

OPINION OF BOARD: A Section Foreman and three Trackmen complain that the use of employes from an outside Seniority District to perform work on the Claimants' assigned Seniority District violated Rules 4 and 5 of the Agreement. The Claimants assert entitlement to the work.

The Claimants, regularly assigned to Section Force 8121, hold seniority within the Track Subdepartment on the Jacksonville and Tampa Divisions Seniority District. The work in dispute was performed by Section Force 6023 employes regularly assigned to the Chattahoochee, Florida, Terminal.

Until September 1, 1978, operation of the Chattahoochee Terminal was under the jurisdiction of the Waycross Division, and the employes assigned to that facility's maintenance work, including the 6023 force, held seniority rights in the Waycross Seniority District.

By Letter of Understanding dated August 21, 1978, the parties agreed to transfer jurisdiction of the terminal operations from the Waycross Division to the Jacksonville Division, effective September 1, 1978. Responsibility for maintenance of the terminal was assigned to Jacksonville Division employes. A specific exception was made, however, for certain Waycross Division employes by the following provisions:

"* * *

The Maintenance of Way Employees who currently maintain the terminal tracks consist of a foreman and seven trackmen holding seniority on the Atlanta/Waycross Divisions Seniority District. As agreed during conference, these employees will be permitted to remain on said positions

until they are furloughed, retired, leave the service for any cause, their positions are abolished or they are displaced by a senior employee from the Atlanta/Waycross Divisions Seniority District in the exercise of seniority.

When one of these positions, which is held by the employees referred to above, becomes permanently vacated, it will be bulletined to the employees on the Jacksonville/Tampa Divisions Seniority District and assignments made from that District. A temporary vacancy on these positions, if filled, will be filled from the Atlanta/Waycross Divisions Seniority District.

Effective September 1, 1978, all other Maintenance of Way work being performed by employees assigned to the Atlanta/Waycross Divisions Seniority District will be performed by employees holding seniority rights on the Jacksonville/Tampa Divisions Seniority District with the exception of the Track Subdepartment Employees mentioned above."

During a 10-day period from June 4 to June 15, 1979, the Carrier assigned Chattahoochee Terminal employees from Section Force 6023 to the maintenance work related to an extensive rail-laying project in the Chattahoochee area on the Jacksonville and Tampa Divisions Seniority District. Section Force 8121 was regularly assigned to that area and they performed duties on the project during their regularly scheduled workdays.

The work in claim was for Saturday, June 9, a rest day for the 8121 force, and for one hour as overtime on June 12, a regular workday of one of the Claimants.

The Organization position is that, since the work arose in the Seniority District to which the Claimants' seniority rights were confined by Rules 4 and 5, the Claimants were entitled to perform it. Those rules, it says, applied with equal force to the seniority rights of the 6023 employees and precluded the crossover from the Waycross Seniority District line to turn over the disputed work to the 6023 employees. The established seniority principle, the Organization says, was affirmed in the Letter of Understanding, which it reads as a strict limitation of the permissible work territory of the particular 6023 employees to the confines of the Chattahoochee Terminal.

The Carrier concedes that the particular 6023 employees remained in the Waycross Seniority District under the provisions of the Letter of Understanding. It does not agree, however, that the understanding restricted those employees in all circumstances to the terminal work, to the exclusion of their assignment to outside areas. It sees no intention in the Letter of Understanding to eliminate the prior practice of assigning these employees, like other forces, beyond the terminal area and outside their Seniority District to assist and augment other forces. It defends the disputed work assignments as part of a work augmentation move and it justifies the selection of the 6023 employees on the basis of their particular experience with the project duties in the five days immediately preceding the Saturday and in the succeeding days.

This is the third of a series of claims protesting the assignment of maintenance employees from an outside Seniority District to perform work associated with the extensive rail-laying project conducted on the regular Seniority District of the 8121 Section Force.

In Award Number 24518, this Board held, in the absence of any contractual or other rational basis to the contrary, that an outside Seniority District employee who worked on the project for the five preceding days was entitled to continue the work as "the regular employee" on the sixth successive day, the Saturday in dispute. On those facts, the employee's previous Seniority District was not considered controlling.

In Award Number 24519, we held, in the absence of any contractual or other rational basis to the contrary, that the outside Seniority District employee assigned to a day's job was entitled to be kept on at the end of the day to perform the extra work necessary to complete that job. On those facts, it did not appear reasonable to expect the Carrier to remove the employee at the end of the day and immediately replace him with another employee to finish the job.

We are now brought to the question whether there is a rational basis in the Agreement or the Letter of Understanding or in other record evidence for holding that the protested assignments to the 6023 employees were improper in the circumstances presented here. On careful examination and analysis, the Board finds no such rational basis.

The practical fact situation now before us is similar to that presented in each of the other two awards in these significant respects: The work in dispute was a part of the same extensive ongoing special project. The Saturday work arose after the outside employees had been working with the project for the entire week and the additional day was needed to prepare for the next workday. The one hour of overtime work was required to complete the particular day's job. During the regular workday, the Claimants were engaged in other maintenance duties on the same project, and they did not challenge the assignments to the outside employees during those hours.

In the Board's view, the two prior Awards should control the outcome of this dispute for the reasons there stated -- unless it can be found, as the Organization contends, that the Letter of Understanding dictates otherwise with respect to the particular employees assigned to this particular work. The Board does not believe that the Letter of Understanding can reasonably be read in that way.

The plain language of the Letter of Understanding evidences a clear intent to protect the specially designated employees from the loss of their Waycross District seniority rights which would have resulted from the transfer of jurisdiction to the Jacksonville District. By virtue of the Letter of Understanding, their positions in the terminal were to be preserved, and they were to be regarded as remaining in the Waycross Seniority District. There is, however, no express provision, nor any good reason to infer, that those designated employees were at all times to be totally restricted to maintenance work

arising only in the terminal. Such a limitation would both adversely affect the interest of those employees and reverse only as to them a prior management practice of efficient use of employees for work outside their immediate territory to augment and assist other forces. An intention to achieve such a significant change would accordingly have to be clearly expressed. We note as a further weakness in the Organization's interpretation that it has not maintained a consistent position, for it has not challenged the assignment of the particular employees to the work on the project during the Claimants' regular hours.

In view of the foregoing, the claims 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 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 not violated.

A W A R D

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 22nd day of September, 1983.

