

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26361
Docket Number MW-26689

John E. Cloney, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
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(Canadian Pacific Limited (on lines operated in the States
(of Maine and Vermont in the U.S.A.)

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

(1) The Carrier violated the Agreement when it failed to recall furloughed Extra Gang Laborer S. W. Peck to service on and subsequent to July 11, 1983 (Carrier's File P-2653).

(2) Extra Gang Laborer S. W. Peck shall be recalled to service with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered retroactive from November 29, 1983."

OPINION OF BOARD: Claimant established seniority as an Extra Gang Laborer on May 12, 1980, working in the State of Vermont. He was furloughed in 1981 in a force reduction and remained on furlough throughout 1982. In about July, 1983, some furloughed Extra Gang Laborers were recalled, among them one Woodruff, an employee junior to Claimant. Claimant was recalled on November 29, 1983, on which date he apparently learned for the first time of Woodruff's recall. On the same date he wrote Roadmaster Goss claiming time lost since the date Woodruff was recalled.

Rule 1 of the Agreement states:

"1.1 By Maintenance of Way Employee is meant employees working in the Track and Bridge Building Departments, for whom rates of pay are provided in this Agreement. Labourers in extra gangs, unless those engaged practically all year round, shall not be considered as coming under this schedule."

Extra Gang Laborers are covered by "Appendix G" rather than the "Main" Agreement.

Section 6 of Appendix "G" provides:

"6.7 Laid off employees shall be recalled to service in order of seniority when staff is increased or when vacancies occur."

Article 11.5 of the "Main" Agreement apparently provides that employees who had not performed any service during 1982 would be stricken from the Roster. The parties apparently met yearly to revise seniority lists.

Section 8, Article 8.1 of Appendix "G" provides:

"The following rules contained in the main Collective Agreement governing ... forces in the State of Maine and Vermont are applicable to Extra Gang Labourers."

Rule 11 is not one of the Rules identified in Section 8, Article 8.1.

During handling on the property the Regional Engineer wrote General Chairman Valence on August 3, 1984, stating:

"MSW Peck's record shows that he had not performed any service ... in 1982 and, as such, his name was taken off the seniority list of extra gang employees when the seniority lists were revised for year 1983. This was in accordance with Article 11.5 of the Collective Agreement for the States of Vermont and Maine. This was done with your concurrence during the 1983 seniority list meeting, which you attended with the Division officers."

Valence responded Claimant's name did appear on the 1983 list. In October, 1984, Carrier's General Manager responded, enclosing a copy of the 1982 Seniority Roster for Extra Gang Laborers. Claimant's name, as well as that of several others, is lined out.

On May 9, 1985, General Chairman Thiessen wrote General Manager Swanson pointing out Article 11.5 was not applicable, quoting Section 8.1 of Appendix G.

On June 3, 1985, Swanson wrote Thiessen repeating Claimant's name had been removed by agreement with Valence but remained on the list through oversight and was later removed. In this same letter Swanson agreed Rule 11.5 did not apply and apologized for any inconvenience caused. He stated new procedures have been adopted to avoid recurrences. He also offered to include Claimant on the seniority list with a May 12, 1980, date on the condition that all outstanding claims be dropped. The Organization refused on June 11, 1985.

Clearly this situation arose from a good faith mutual mistake. From the inception of the Claim until May, 1985, apparently neither party realized Article 11.5 was not applicable. When the mistake was realized Carrier apologized, but its response was otherwise inadequate. We will require that Claimant be reinstated to his seniority date of May 12, 1980, and be compensated for any losses he suffered after the error was recognized on June 3, 1985.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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

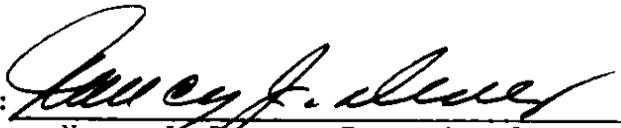
That the Agreement was violated.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 25th day of June 1987.