

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26578  
Docket Number MW-26155

Marty E. Zusman, Referee

PARTIES TO DISPUTE: ( (Brotherhood of Maintenance of Way Employes  
(Soo Line Railroad Company

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

1. The Agreement was violated when the Carrier failed and refused to allow Extra Gang Laborers M. St. Cyr and K. Pray to displace from the rail gang to the ballast gang when they were displaced from the rail gang on September 23 and 27, 1983, respectively, and when the Carrier failed and refused to allow Extra Gang Laborers G. P. Meyer, P. Karnitz, D. H. Lee, R. A. Hennekens and H. H. Nissen to displace on the rail gang when their positions on the ballast gang were abolished on October 20, 1983 [System File 4((h)8(a)].

2. As a consequence of the afore-said violation:

(a) Claimant M. St. Cyr should be made whole for all time and vacation rights lost as a result of this continuing violation of Rule 4(h) from September 26, 1983, the date on which the Organization contends that the claimant should have been allowed to displace on the B-1 Ballast Gang in accordance with Schedules Rules 4(h) and 8(a), until such time as the B-1 Ballast Gang is tied up for the season.

(b) Claimant K. Pray should be made whole for all time and vacation rights lost as a result of this continuing violation of Rule 4(h) from October 3, 1983, the date on which the Organization contends that the Claimant should have been allowed to displace on the B-1 Ballast Gang in accordance with Schedules Rules 4(h) and 8(a), until such time as the B-1 Ballast Gang is tied up for the season.

(c) Claimant R. A. Hennekens should be made whole for all time and vacation rights lost as a result of this continuing violation of Rule 4(h) from October 21, 1983, the date on which the Organization contends that the claimant should have been allowed to displace in the R-1 Rail Gang in accordance with Schedules Rules 4(h) and 8(a), until such time as the R-1 Rail Gang is tied up for the season.

(d) Claimants G. P. Meyer, P. Karnitz, D. H. Lee and H. H. Nissen should be made whole for all time and vacation rights lost as a result of this continuing violation of Rule 4(h) from October 24, 1983, the date on which the Organization contends that the claimants should have been allowed to displace in the R-1 Rail Gang in accordance with Schedules Rules 4(h) and 8(a), and until such time as the R-1 Rail Gang is tied up for the season."

OPINION OF BOARD: This is a contract interpretation case in which the pivotal question before this Board is whether the Carrier has correctly and appropriately allowed seniority displacement on extra gangs. The instant dispute revolves around seasonal call back of employees to extra gang work. Two separate gang rosters were established, one for Rail Gangs and one for Ballast Gangs. All involved employees held seniority as Extra Gang Laborers and were called back to either of the above separate gang rosters for seasonal work. The Claimants attempted to displace from Rail Gang to Ballast Gang and vice versa.

The Organization contends that the Carrier violated the Agreement and particularly Rule 4(h) which allows the employees the right of displacement by seniority. That Rule states in pertinent part:

"Schedule Rule 4

(h) Seniority rights of extra gang laborers employed in large extra gangs of 35 men or over shall extend over the system but confined to extra gangs."

It is the Organization's contention that the Rule is clear and unambiguous. Said Rule permits "extra gang laborers with system seniority to displace in any other extra gang with system seniority rights." In support of its position, the Organization cites a letter of July 21, 1983, written by the General Chairman, which pertains to a telephone understanding of the exact circumstances and interpretation disputed in the instant case. In that letter, "it was agreed" that cases of the type herein a part of this dispute, would be handled in a manner consistent with the Organization's understanding of Rule 4(h). As further supporting evidence, the Organization notes that Employee Nivison was previously allowed to displace in exactly the same manner as herein denied by the Carrier.

The Carrier denied such displacement rights arguing that Claimants held seniority on one or the other separate gang rosters and no Rule allowed displacement between roster. It noted that Rule 5(a) stated that "seniority rosters of employees of each sub-department by seniority groups will be separately compiled." It was the Carrier's position that the Rail Gang Roster was a system seniority roster and separately held, thereby restricting employees from carrying that seniority to a second roster such as the Ballast Gang for displacement. Carrier maintained that this had historically been the case in that no extra gang employee had ever been allowed displacement between types of gangs.

As a preliminary point, the Board emphasizes that its decision rests only upon those arguments, lines of reasoning, substantiated evidence and material fact as presented by the parties during their handling on the property. Carrier's note on its July 21, 1983, letter and all such seniority rosters and correspondence relating to Tie Gangs were not firmly established on the property. The National Railroad Adjustment Board has consistently held that arguments not firmly developed on the property are considered by this Board as untimely and inadmissible.

Turning to the substance of the issue, Rule 4(h) does not distinguish between Rail Gangs and Ballast Gangs. It is therefore not specific with respect to displacement between such rosters. While separate Rail and Ballast gang rosters exist by seniority, there is no probative evidence that displacements between rosters has ever occurred. The sole exception in the record is refuted by the Carrier arguing that Nivison filled an open position, rather than displaced by seniority. With regard to the Organization's July 21, 1983, letter of evidence, the Board notes that it is a unilateral memo that holds little probative weight in that it has no mutual signature of agreement and was denied on the property. Further, the Organization states that Nivison had a seniority date on the Rail Gang Laborer's Seniority Roster and was:

"Not allowed to use his Rail Gang seniority to displace into the B-1 Ballast Gang as a means of obtaining initial employment during the season, but required to wait until called back initially to the Rail Gang where his restored seniority obtained."

This clearly indicates separate seniority rosters restricting employees to gangs. For the Organization's interpretation of Rule 4(h) to be accepted, an illogical result would follow. A senior Rail Gang employee would have the right to displace a junior employee on the Ballast Gang, but that senior employee would not have the initial right to that same junior Ballast Gang position. If all employees hold seniority as Extra Gang Laborers, but must await callback for seasonal employment to the separate seniority list of Rail or Ballast Gang, then it logically follows that they have displacement rights only within the Gang in which they hold seniority. It is not within the "rule of reason" to construe an agreement in such a manner as to produce the above noted inconsistent result.

The Organization has the burden to support its Claim with sufficient probative evidence to carry its burden. It has failed to do so in the instant case and as such the Claim 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 Employee involved in this dispute are respectively Carrier and Employee 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

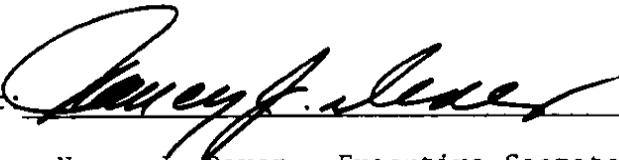
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

A handwritten signature in cursive script, appearing to read "Nancy J. Dever", is written over a horizontal line.

Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of September 1987.