

PUBLIC LAW BOARD NO. 76

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

vs.

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

Roy R. Ray, Referee

STATEMENT OF CLAIM:

1. The Carrier violated the effective Agreement by blanking the position of Foreman on Extra Gang No. 587 during the periods April 4, through April 8, and April 18 through April 22, 1966.
2. The Senior Assistant Track Foreman and/or Track Foreman on the Relief Track Foreman's Roster dated 1966, Old South Texas Division (as listed by name in Organization's letter of June 14, 1966) should have been assigned to the vacancy referred to in Part 1 of this claim.
3. The Senior Relief Foreman as identified be now compensated for the difference between the amount he received at his respective rate and what he would have received at the Extra Gang Foreman's rate if the Agreement had been complied with.

OPINION OF BOARD: During the periods involved here J. E. Autrey was regularly assigned as Track Foreman of Extra Gang No. 587. On two separate occasions during April 1966, he absented himself from work for an entire week without previously receiving permission. In the first instance he was absent April 4 through April 8 as a result of a death in the family. On Wednesday (April 6) Autrey called Division Engineer Clark, who was not aware of his absence, by long distance and asked if he could have the entire week charged to his vacation (which had been scheduled for August). Clark agreed to the request. Two weeks later (April 18) Autrey again took off without prior permission and unknown

to Division Engineer Clark. He was absent through April 22, this time for financial reasons. After he returned to work on April 25th he requested and was granted permission to charge the week of April 18-22 against the remaining five days of his vacation. In both instances the Company granted permission to charge the time off against his vacation to prevent Autrey from losing pay in April when he was having financial problems. During the two periods Autrey was off his position of Foreman of Gang 587 was not filled. The members of his gang were placed under the direction of Yard Foreman H. L. Harrell.

The Organization contends that the Senior Assistant Track Foreman or Track Foreman on the Relief Track Foreman's Roster (as listed in Chairman Jones' letter of June 14, 1966) should have been assigned to fill Autrey's job for the two weeks and that failure to so assign him was a violation of Article 4, Sections 1 and 4 of the Agreement. In its original letter of claim the organization had also charged a violation of Article 26, Rule 6 (Vacations) and Article 27, Rules 1 and 2 (Vacation Relief Work). However, at the hearing before this Board these charges were not pressed.

Carrier contends that the part of the claim dealing with the week of April 4-8, 1966, is barred by time limits; and that the entire claim is without merit. It says it has complied with Article 4, Rule 1 and that nothing in Article 4, Rule 4, requires it to fill every short vacancy in the position of Foreman, nor prohibits it from blanking a foreman's position when he is off for a few days. Furthermore, it says Rule 4 is not applicable here because all the men on the Relief Roster were regularly assigned at the times in question.

Carrier's position with reference to the time limit rule must

be sustained. The Organization's claim was not filed until June 14th, more than sixty days after the first alleged violation occurred on April 4-8. The rule was invoked by Chief Engineer Hunter and Vice President Winkel on the property. This Board, therefore, has no alternative except to dismiss the claim involving the work week of April 4 through April 8.

We turn to the remaining portion of the claim. Although the Organization did not press its earlier contention that Articles 26, Rule 6, and Article 27, Rules 1 and 2 were violated, we think we should put the contention to rest. In our judgement the vacation rules have no relevance to the present claim since at the times Autrey absented himself without permission he was not taking a scheduled vacation and Carrier had no reason to assign vacation relief or for that matter to suppose any was needed. It was only through indulgence of the Carrier that Autrey was later allowed to convert his absences into his vacation or to have them charged as such.

This leaves for consideration only the merits of that part of the claim involving failure to fill Autrey's position during the week of April 18-22 from the Relief Roster.

Article 4, Rule 1, provides

The Division Engineer will select from Track Laborers' roster not to exceed four men on each seniority district to be used as relief assistant track foremen and/or track foremen on their respective seniority districts. The Track Laborers so selected will be advised in writing, a copy of such advice will be sent to General Chairman and to Local Chairman. The men so selected shall be those the Division Engineer regards as most likely material for promotion to assistant track foreman, and/or track foreman. These men shall be used for relief assistant track foreman and/or track foremen's work on their seniority district, and if their work as relief foreman or assistant foreman during the period of twelve consecutive months following their selection for relief work is satisfactory and they pass satisfactory examinations, they

shall be eligible in the order of their written designation as relief foreman for promotion to assistant track formanship and/or track formanship on their seniority district. Where conditions make necessary men may be promoted in less than twelve months.

Article 4, Rule 4, provides

Vacancies or new positions, that are definitely known to be of twenty (20) days or less duration, will not be bulletined. The senior unassigned foreman or senior relief foreman will be notified at last available address of such vacancy, and shall immediately inform the Division Engineer of acceptance or rejection. Until such senior unassigned foreman or unassigned relief foreman gets on the job, or if he rejects it or fails to notify the Division Engineer, vacancy may be filled in the most practicable manner.

Rule 1 of Article 4 deals with the selection from Track Laborers' Roster of men to serve as relief assistant track foremen and track foremen, and with their possible promotion to such classifications. Since it appears from the record that all of the men listed in Chairman Jones' letter of June 14, as being on the Relief Roster held seniority as Track Foreman or Assistant Track Foreman, we find no violation of Rule 1.

Article 4, Rule 4, deals with the filling of short term absences. It says that when it is known that a vacancy is to be for less than 20 days the senior unassigned foreman or unassigned assistant foreman will be offered the vacancy. We find nothing in this rule requiring Carrier to fill every short term vacancy in the Foreman's position. In our views it describes the procedure to be followed when a vacancy is to be filled.

But even if the Rule be considered to require the filling of such vacancies, the Organization has not shown that Carrier failed to comply with it. Carrier's evidence indicated that all 12 men on the Relief Foreman Roster were regularly assigned at the time in question. Since

Carrier is required to offer the position only to senior unassigned men, if there was none Carrier could not have violated these rules. The Organization does not deny that all 12 men on the Roster were assigned but it says some of them were assigned on jobs rated lower than that of Autrey and that the Carrier was required to use such a lower rated employee. We cannot agree; the phrase "senior unassigned" is not qualified by any such limitation.

For the foregoing reasons we find that Carrier did not violate the Agreement.

#### AWARD

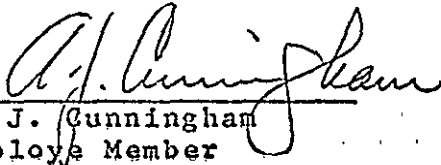
The part of the claim involving the period of April 4-8, 1966, is dismissed for want of jurisdiction.

The part of the claim dealing with the period of April 18-22, 1966, is denied.

Public Law Board No. 76



Roy R. Ray  
Neutral Member and Chairman



A. J. Cunningham  
Employee Member



A. F. Winkel  
Carrier Member

Dallas, Texas  
June 19, 1968