

SPECIAL BOARD OF ADJUSTMENT NO. 488

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
THE BALTIMORE AND OHIO RAILROAD COMPANY

AWARD IN DOCKET NO. 1

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

(1) The Carrier violated the effective Agreement by failing to call Substitute Foreman Alvin E. Archinal, Section No. 16212 for overtime work due to a derailment at Tippecanoe, Ohio, on Section No. 16212, Saturday, November 28, 1959.

(2) That Substitute Foreman Alvin E. Archinal be now paid 14-1/2 hours at his respective pro rata pay, account of the Carrier's violation of the Agreement."

FINDINGS: The question at issue here revolves on the effect which "The Rearrangement of Track Forces" Agreement of April 1, 1959 had upon the seniority rights of trackmen as they existed under the April 1, 1951 Agreement.

We have fully examined these agreements, including the document entitled "Questions and Answers on the Rearrangement of Track Forces as agreed to in conference on July 29, 1959" as well as the 97 transcript pages utilized by the parties in their presentations and argument before this Board.

In consequence, we believe a sustaining Award is in order for the following six reasons:

1. The 1951 Agreement (Rule 6(a)) restricted the seniority rights of trackmen as such to their respective gangs, with one exception: that in force reduction, trackmen with 3 months' or more seniority could displace trackmen junior in the service under one supervisor. When the force was increased, or a permanent vacancy occurred "in gang in which original seniority was held" trackmen who had previously exercised their seniority beyond the limits of their basic gang into the territory of the supervisor must return to their original gang within 20 days or forfeit such gang seniority.
2. The "Rearrangement Agreement" of 1959 changed the trackman's rights as described in paragraph No. 1 by granting to such trackman an extension of his seniority rights to new positions or vacancies from his "respective gang" to the "territory over which one Track Supervisor has jurisdiction." In case of force reduction, the trackmen continued to have the right to displace junior men on their Track Supervisor's territory.
3. In so doing, however, the parties did not destroy the trackman's basic gang seniority; it extended it so far as new positions or vacancies are concerned.
4. The "Rearrangement Agreement" further provides that where temporary vacancies or new positions of trackmen are to be filled pending bulletin, preference will be given in seniority order to furloughed employees who last worked

in that "gang". The parties made no distinction as between Extra Gang or Section Gang.

5. We cannot agree with Carrier argument that the "Rearrangement Agreement" relegated Section Gangs to the role of patrol gangs, and nothing else. Patrolling is part of their assignment, but the performance of work the "gang is capable of doing" is an assignment of some substance if the trackmen are experienced trackmen. They evidently are because they hold these jobs on the basis of long years of seniority.
6. Rule 18(b) was not in the least affected by the "Rearrangement Agreement." The day upon which the derailment occurred was not a part of any assignment; there were no available extra or unassigned employees, and Carrier should have first called the regular employee -- the claimant in this Docket.

AWARD

Claim sustained.

(s) Edward A. Lynch

Edward A. Lynch, Chairman

(s) A. J. Cunningham

A. J. Cunningham, Employee Member

T. S. Woods, Carrier Member

Dated at Baltimore, Md.,
this 26th day of March, 1963.