

Award No. 6872

Docket No. MW-6607

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

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

(1) The Carrier violated the agreement when it failed to call available employees who were regularly assigned to Section SA-2 to perform service on their regularly assigned rest day (Monday, January 7, 1952) and on their regularly assigned territory and in lieu thereof assigned employees from an adjoining section to perform service on Section SA-2;

(2) Section Foreman H. J. Wimp and Laborers D. Kehm and H. Bridegam, who are regularly assigned to Section SA-2 be allowed 2 hours 40 minutes pay each at their respective time and one-half rate, account of the violation referred to in part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: Section Foreman H. J. Wimp, Section Laborer D. Kehm and Section Laborer H. Bridegam are regularly assigned to Section SA-2 at the Carrier's terminal at Lincoln, Nebraska, and are regularly assigned to work Tuesdays through Saturdays of each week. Sundays and Mondays are the regularly designated rest days of employees assigned to Section SA-2.

The Carrier forces assigned to Section SA-1 at the Carrier's terminal at Lincoln, Nebraska, are regularly assigned to work on Mondays through Fridays of each week and are assigned Saturdays and Sundays as their regularly designated rest days.

On Monday, January 7, 1952, the Carrier's Roadmaster arranged to have employees assigned to Section SA-1 clean out a crossing leading into the Watson Brickson Lumber Company. This crossing is on the territory designated as Section SA-2, and although the claimants, who are assigned to Section SA-2, were available and willing to perform the required repair work on their assigned territory, the Carrier made no effort to call them. In lieu thereof, the Carrier instructed employees from Section SA-1 to perform the necessary repair work.

The Carrier affirmatively states that all data herein and herewith submitted has been previously submitted to the Employees.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts in this case are not in dispute. Section forces at the Lincoln, Nebraska Terminal are assigned to three sections designated as Sections SA-1 SA-2 and SA-3. Sections Gangs SA-1 and SA-3 were assigned Monday through Friday with Saturday and Sunday as rest days. Section Gang SA-2 was assigned Tuesday through Saturday with Sunday and Monday as rest days. On Monday January 7 1952, some emergency work was required to be performed on Section SA-2. Two section laborers assigned to Section SA-1 were used to do the work. Claimants are members of Section Gang SA-2. They assert the work belonged to them and make claim for a call.

The submissions are unnecessarily long. In the interest of brevity, we shall state the conclusions to be drawn from the record. The Lincoln Terminal is a five day facility. The Carrier contended that an operational problem existed and requested that the Organization permit a deviation from the Monday-Friday week by permitting one section gang to be assigned Tuesday through Saturday in Chicago, Galesburg, Kansas City, Omaha, Lincoln and Denver. An agreement was made which we consider binding upon the parties for the following reasons: (1) It was made in contemplation of the adoption of the Forty Hour Work Week Agreement which was agreed to on the national level on March 19, 1949. (2) It was considered as a binding agreement by both parties and acted upon and acquiesced in as such. (3) The Forty Hour Work Week Agreement, executed on this Carrier on July 21, 1949, effective September 1, 1949, superseded only such agreements as had effective dates prior to December 1, 1946 and consequently did not supersede the letter agreement here involved whether it was made on July 20, 1949, or a date subsequent thereto.

The issue therefore is the nature of the agreement alleged to have been made on July 20, 1949. The Carrier's contention is that the agreement provides that the section gangs assigned Monday through Friday on Sections SA-1 and SA-3 are permitted to do all emergency work arising on Monday on Section SA-2 and that the section gang assigned Tuesday through Saturday on Section SA-2 is permitted to do all emergency work arising on Saturday on Sections SA-1 and SA-3.

The Organization contends that the Carrier desired a Tuesday-Saturday assignment at the designated points for the following reason: The Carrier was fearful that with all section forces assigned Monday Through Friday, with Saturday and Sundays as rest days, that it might have difficulty in calling employes for emergency service because of the longer week end absences and, in order to be certain that some of its forces would be available, it desired that one gang be assigned Tuesday through Saturday. The Organization argues that the understanding did not waive the rights of the available employes to be called for rest day work on their respective sections and that it was only when they were unavailable that employes from another section could properly be used.

To determine the issue, we must look to the agreement made. It is presumed that all the negotiations of the parties, including their various contentions and agreements, are merged in the written agreement. Undisclosed or rejected intentions of either of the parties must give way to the agreement made as discerned from the language used. Effect should be given to all of the language of the agreement and the different provisions contained in it should be reconciled so that they are consistent, harmonious and sensible. They should be so integrated and construed with other valid existing agreements in order to produce a consistent, harmonious and sensible pattern expressing the true intent of the parties as demonstrated by the language employed. Award 6856.

We are obliged to concur with the views of the Organization in the present dispute. If it was the intention of the Carrier to modify the seniority, overtime and call rules of the primary agreement in requesting a deviation of the Monday-Friday week, appropriate language should have been incorporated in its request so that it would have become a part of the agreed upon understanding. This it did not do or cause to be done. The understanding made is susceptible to the interpretation placed upon it by the Organization. We cannot by interpretation, without and language appearing which is subject to construction, change the seniority rights of claimants to the work in question, nor in such a manner deprive them of rights arising under the overtime and call rules. We are required to hold that the intention of the Carrier, as we have heretofore stated it, cannot be found from the language used in the letter agreement. An affirmative award is therefore required. See Award 5441.

Two employes were improperly used on Section SA-2. The claim will be sustained for a call for each of the two claimants entitled thereto.

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 Employes involved in this dispute are respectively Carrier and Employes 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.

AWARD

Claim sustained in accordance with Opinions and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 4th day of February, 1955.