

Award No. 10904

Docket No. MW-11887

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Roy R. Ray, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**MISSOURI-KANSAS-TEXAS RAILROAD COMPANY
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS**

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

(1) Carrier violated the effective Agreement when it considered Mr. J. L. Dement as being out of service and when it dropped his name from the seniority list because of an erroneous conclusion that he had not been restored to service within twelve months of July 25, 1958.

(2) The Carrier be ordered and directed to recall its letter of July 30, 1959 addressed to Mr. J. L. Dement notifying him that he was considered out of service and that his name was being dropped from the seniority list.

(3) That Mr. J. L. Dement be allowed pay at Bridge and Building mechanic's rate for all time lost from July 3, 1959 and continuing until he is actually returned to active service.

EMPLOYES' STATEMENT OF FACTS: The instant dispute centers around a notice sent to the claimant which reads:

"Dallas 2, Texas, July 30, 1959.
PR-72787

Mr. J. L. Dement,
500 Whitehead Street,
Smithville, Texas.

Dear Sir:

Records show that you were laid off by reason of force reduction on July 25, 1958 and that force has not been restored within twelve (12) months after date of reduction.

In accordance with Rule 25 of Article 3 of current agreement with the Brotherhood of Maintenance of Way Employes, you are

"The principle is well settled that this Board is without authority to add to the existing contract. See Fourth Division Awards 105, 242, and 989."

Award 1225 of the Fourth Division, with Referee Coburn:

"It is well established that the Board is limited to an interpretation of the terms and conditions of the applicable agreement and that so long as its provisions are clear and explicit we may not vary or modify them by implication. . . ."

Award 938 of the Fourth Division, with Referee Carey:

"To apply the meaning claimed by petitioner would be equivalent to revising the Agreement to provide that seniority is to be the controlling test in all cases. That this Board lacks that authority is not open to question."

Carrier therefore respectfully requests that the Third Division decline to be a party to this obvious attempt on the part of the Employees and Organization to secure a revision of Article 3, Rule 25 of the controlling Agreement, by completely rejecting and denying this claim.

All data submitted in support of the Carrier's position have been heretofore submitted to the Employees or their duly accredited representatives.

The Carrier requests ample time and opportunity to reply to any and all allegations contained in Employees' and Organization's submission and pleadings.

Except as herein expressly admitted, the Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas, and each of them, deny each and every, all and singular, the allegations of the Organization and Employees in alleged unadjusted dispute, claim or grievance.

For each and all of the foregoing reasons, the Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas, and each of them, respectfully request the Third Division, National Railroad Adjustment Board, deny said claim and grant said Railroad Companies, and each of them, such other relief to which they may be entitled.

(Exhibits not reproduced.)

OPINION OF BOARD: On July 25, 1958, the Bridge and Building Gang No. 729, Seniority District No. 5 was abolished and Claimant J. L. Dement, a member of the Gang was furloughed. The only seniority held by Claimant was on Seniority District No. 5 and this did not entitle him to place himself on any position on any other gang. During the following twelve (12) months the only service Claimant performed was a period of seventeen (17) working days between June 29, 1959 and July 21, 1959 when he was recalled for temporary duty with the Steel Bridge Gang (a system gang on which he held no seniority) making emergency repairs to Red River Bridge damaged in an accident. On July 30, 1959 Carrier's Vice President for Personnel wrote Claimant a letter stating that since force had not been restored within twelve months from the time of reduction, Claimant's name was being dropped from the seniority list in accordance with Rule 25 of Article 3 of the current Agreement. The General Chairman wrote the Vice President on September

15, 1959 protesting the removal of Claimant's name from the seniority list and filed the present claim. This claim was denied by Carrier at all stages and processed to this Board.

The Organization contends that Carrier's action in dropping Claimant's name from the Seniority list was in violation of Rule 25 of Article 3 for two reasons: (1) Carrier failed to bulletin a temporary vacancy in Claimant's own Seniority District (No. 5) on July 3, 1959, and thereby deprived Claimant of the opportunity to bid for and possibly preserve his seniority through assignment to the position. (2) Recall of Claimant to the Steel Bridge Gang on June 29, 1959, within the twelve (12) month period, terminated his "furlough" status and restored his "seniority" status.

The Carrier's position is that there was no restoration of force within the twelve (12) months after July 25, 1958 when Claimant was furloughed and that Carrier's action in dropping him from the Seniority list was in accordance with Rule 25 of Article 3.

Article 3 deals with Seniority and Rule 25 provides:

"Rule 25. When employes laid off by reason of force reduction desire to retain their seniority rights, laborers must file as provided in Rule 14 of this Article and other employes must file with the officer of the subdepartment, within five days of the day on which they were notified of layoff, their address, and renew same each sixty (60) days. Failure to renew the address each sixty (60) days or to return to service within seven (7) days after being so notified, will forfeit all seniority rights. When force is not restored within twelve (12) months after date of reduction, employe will be considered out of service and dropped from seniority list."

We turn first to the Claimant's argument that Carrier's failure to recall Claimant to fill a temporary vacancy in his own Seniority District on July 3, 1959 was contrary to the Requirements of Rule 5(b) of Article 5 thus making its action in dropping Claimant from the seniority list a violation of Rule 25 of Article 3. While this position was taken by the Organization in the handling of the claim on the property it is not encompassed within the Statement of Claims as submitted to this Board and under the accepted practice of the Board cannot be considered. The sole question presented by the claim is whether through restoration of force Claimant was restored to service. Whether Carrier should have recalled Claimant to fill some temporary vacancy and the effect of such recall is not before the Board under the present claim.

Certain facts are clear and undisputed. Claimant held Seniority in District No. 5 when he was furloughed on July 25, 1958 because of reduction in force of that District. Claimant held no seniority in any other district. Although the General Chairman originally asserted that Claimant had seniority in the System Steel Bridge Gang, the record does not bear this out and besides it is not included in the statement of claim submitted. Claimant fully complied with the requirements of Rule 25 of Article 3 concerning filing within five days his name and address with the proper officer of the Carrier and renewing his address each sixty days. No contention is made that force was restored in Seniority District No. 5.

The real dispute in this case, therefore, centers around the service performed by Claimant on the Steel Bridge Gang and the decisive question is whether this constituted a "Restoration of Force" as that term is used in

Article 3, Rule 25. Aware that Claimant had no seniority in the Steel Bridge Gang, the Organization argues that restoration of force is not limited to the force from which the employe was furloughed but includes any force to which he could properly be assigned. In the judgment of the Board this is without merit. The Agreement sets up separate seniority districts and restricts seniority rights of employes (above the rank of laborers) to one district. A study of Rule 25 of Article 3 and other rules regarding seniority leads to the conclusion that Rule 25 contemplates only the restoration of force in the Seniority District where the employe has seniority. But even if work in a seniority district where the employe had no seniority could under some conceivable circumstances be considered as restoration of force we are of the opinion that the work performed by Claimant of the Steel Bridge Gang would not amount to such a restoration of force within the contemplation of the Agreement. It was emergency work of less than 20 consecutive working days and no vacancy in connection therewith was required to be bulletined. It was temporary service as that term is defined in Rule 26 of Article 3 which did not require the filing or renewal of address in order to retain seniority. Surely such temporary service cannot be considered as restoration of force.

For the reasons expressed above the Board holds that Claimant was not restored to service within the twelve month period following his furlough on July 25, 1958 and that the action of the Carrier in dropping his name from the seniority list was in compliance with Rule 25 of Article 3.

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 9th day of November 1962.