

Award No. 5142

Docket No. MW-5147

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

A. Langley Coffey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

**THE CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC
RAILROAD COMPANY**

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

- (1) That the Carrier violated provisions of the effective agreement on Sunday, October 17, 1948, when it employed extra gang No. 660 in Yards at Galewood and failed to employ the regular section gang assigned to the territory;
- (2) That James Bassello, Frank Laqueia, Rocco Macellaio, Mike Serno, Pasquale Pesole, Tony Salvaggio, Vito Pellegrino, Joe Angileri, Juan Valderaz, Salvator Cassela, Tony Lombardo, and Grant Owens be paid for eight (8) hours each at time and one-half rate of pay because of this improper assignment.

JOINT STATEMENT OF FACTS: In October, 1948, there were six yard gangs assigned at Chicago Terminals. The territorial limits of Gang No. 5 which consisted of approximately three foremen and twenty-three section laborers included Galewood Yard No. 2 Lead.

The 1948 season assignment of Extra Gang 660, consisted of six supervisors and approximately forty-six extra gang laborers, including the project of track changes on the Lead at Galewood Yard No. 2. Extra Gang 660 began work on this project on September 27, 1948. This work was completed by Extra Gang 660, on October 22, 1948. During that period it was the practice for the Extra Gang to perform work only on week days, however, the gang was used on Sunday, October 17, 1948, to complete the project.

The agreement in effect between the parties to this dispute, effective November 1, 1940, and as subsequently amended, is by reference made a part of this Statement of Facts.

POSITION OF EMPLOYEES: In order to maintain its trackage the railroad Management has divided the various divisions into units or sections, each section being in charge of a Foreman who has a certain number of laborers under his supervision. The section laborers assigned to each respective crew hold seniority rights as laborers within their respective seniority districts.

After being assigned to a crew or gang on a seniority district, an employee's rights are confined to that crew or gang except in instances where forces are reduced, vacancies occur, or positions bulletined.

There is no rule in the agreement, between the carrier and the Brotherhood, that would prevent the use of Extra Gang 660 on Sunday to perform the same work that they had been performing during the week; neither is there any rule or agreement which would require using all or a part of Yard Gang No. 5 to augment the extra gang when used.

The Employees have cited no rule which required the Carrier to use the specific twelve section laborers named in the claim from Yard Gang 5, which then consisted of twenty-three laborers, to perform overtime work in connection with a project which was then, and for sometime previous, assigned to the extra gang, nor does such a rule exist.

The Carrier again asserts there is no schedule rule, custom or practice which would in any way support the claim which the Employees have presented, however, if the Employees' contention is correct—and we do not concede it is—then we direct attention to the principle found in many of the Third Division Awards to the effect that only the straight time rate is allowable under such circumstances.

It is possible the Employees may attempt to support the claim by contending that the work performed by the extra gang on Sunday, October 17th, 1948 was maintenance work. We should like to state that the work performed by the extra gang on Sunday, October 17th, 1948 was in connection with the major track change project which involved work of laying ties, rails, ballasting, etc., and was not ordinary maintenance work such as is customarily performed by section crews or yard terminal crews.

Even though the work which the extra gang performed on Sunday, October 17th, 1948 could be considered maintenance work, which was not the case, it would still be the Carrier's position that the use of the extra gang solely for that work, which was in connection with the project involving track changes, was entirely proper, in accordance with the practice that has prevailed for many years and there is no schedule rule which would in any way support a claim such as we have here.

The Board's attention is respectfully invited to Award No. 2025 of this Division. While this case is not analogous to the one here in controversy, there were certain principles there set down that certainly bear on the contention of the Carrier.

In that award the employees contended that the section foreman in charge of that section was entitled to be called for any track work on his section, but the Board in its wisdom did not hold to this view, but held to the principle that such a practice was not obligatory under all conditions.

In view of these circumstances it is hoped and believed that this Board will confirm the carrier's position and deny the employees' claim.

OPINION OF BOARD: The parties, by their joint submission, agree on the facts, but differ on whether or not a section crew has the prior right to perform work in its territory, on a project to which an extra gang has been assigned, when the work falls on a day outside the normal or scheduled work days of the week.

Basically the question concerns the rights of laborers holding seniority on their section, as opposed to those who have no seniority under the Agreement, to perform work falling outside the usual and normal working days of the week when the regular crew was available and not working.

The 1948 season assignment of the extra gang included the project of track changes on the Lead at Galewood Yard No. 2, within the territorial limits of the regularly assigned forces. According to the record the extra gang worked only on week days, but in order to rush the work to completion, it was assigned to work Sunday, October 17, 1948, a time when the regular crew was off.

It appears to be an accepted railroad practice, when major projects such as laying new rail, rail changes, ballasting track, new tracks, etc., and other work normally outside day to day maintenance are undertaken, to program and budget the work as a special project, and have it performed by extra gangs organized for this specific purpose. It seems to be the Carrier's theory that the project thereupon becomes the exclusive work of the extra gang to which assigned until completed.

The Organization contends that the extra gang in question was put on to augment and assist the Carrier's regularly assigned section forces, which the employes claim is the true purpose of the extra gang in railroad maintenance work.

Whatever merit there may be to the Carrier's position generally, the record in this case dispels any idea that the work on the confronting project was exclusively the work of the extra gang. The joint statement of facts shows an intermingling and commingling of the forces constituting the section crew and the extra gang until the Carrier had need for the section crew elsewhere. If then was taken off the project and both crews continued to work week days. When the occasion arose by which the Carrier had to prefer one group of employes over the other for work outside their normal working days, preference was given employes without seniority over those holding seniority on the section in question.

We find that the employes holding seniority have a more valid claim to the work in question than do those who have no seniority, and under the facts and circumstances of this case, the claim has merit. See Awards 2716, 2717, 4803.

Also compare Award 4700. In that case the Board upheld the Carrier in using regularly assigned section foremen and their crews on Sunday to perform certain rail laying work which had been performed on week days by claimant's extra crew.

Since claimants enjoyed their rest day status and did not work claim is allowed at only the pro rata rate in this particular case. Compare Award 4948.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived oral hearing thereon;

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 Carrier violated the Agreement.

AWARD

Claim (1 and 2) sustained to the extent indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 13th day of December, 1950.