

Award No. 10451
Docket No. MW-9651

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION
(Supplemental)

Robert J. Wilson, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

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

- (1) The Carrier violated the effective Agreement when it failed to call and use B & B Foreman Tony Schramm and Carpenters W. Danielson, J. Koedyken, A. Arvidson, F. Kelly and H. Kaiser to perform overtime service on Saturday, July 23, 1955 and called and used junior Bridge and Building employees instead.
- (2) Each of the claimants referred to in Part (1) of this claim be allowed eight hours' pay at their respective time and one-half rates because of the violation referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: The claimant B & B Foreman and Carpenters, as well as B & B Foreman Fred Olson and Carpenters J. Halstead, R. Sloan, G. Miller, P. Djaczenko and J. Mottel are among the employes regularly assigned to a Bridge and Building gang which the carrier maintains at Gary, Indiana.

The Bridge and Building employes headquartered at the aforementioned location were regularly assigned to a 40-hour work week, consisting of five days, eight hours each day, with Saturdays and Sundays as designated rest days.

On Friday, July 22, 1955 B & B Foreman Fred Olson, and Carpenters J. Halstead, R. Sloan, G. Miller, P. Djaczenko, and J. Mottel, who hold less seniority in their respective classifications than the claimants, were notified to and did perform eight hours of service in repairing Bridge 710 on Saturday, July 23, 1955, for which they were paid at their respective time and one-half rates of pay.

The claimants were available, ready and willing to perform overtime service on the rest day in question, but were not notified or called to do so. Consequently, a claim was filed, in behalf of the claimants, requesting that each be allowed eight hours' pay at their respective time and one-half rates because of this improper work assignment.

All material data included herein have been discussed with the Organization either in conference or correspondence.

(Exhibits not reproduced.)

OPINION OF BOARD: Claim is made that the Carrier violated its agreement with the Brotherhood of Maintenance of Way Employees whom it failed to call and use the Claimants to perform overtime work on Saturday, July 23, 1955.

On July 22, 1955 three Employees holding less seniority in their respective classifications than the Claimants were notified to and did perform overtime work in repairing a bridge which had been damaged. There is no dispute as to the qualifications or the availability of the Claimants to perform the work.

The Carrier does not question the right of a senior man to overtime if he is qualified and readily available but claims that under Rule 29(a) the requirement only applies to Employees within their respective gangs. The Carrier maintains that it has 3 bridge and building gangs headquartered at Gary, Indiana. Further that on July 22nd which was a Friday two of the gangs were doing work on a damaged bridge and since it was necessary to continue the work on Saturday, July 23rd they assigned three men who were working in one of the gangs repairing the bridge who were junior to the Claimants. The Carrier bases its right to do so under Rule 29(a) of the Agreement. The pertinent language of Rule 29(a) reads as follows:

"Senior employees, if reasonably available in the respective gangs, will be given preference to calls."

The issue in this case in our opinion comes down to the question as to whether or not there are one or three gangs located at Gary, Indiana. The Carrier maintains there are 3 gangs under 3 foremen at Gary and under the rule cited Senior Employees in the respective gangs are entitled to the call if readily available. On the other hand the Organization claims that there were not three gangs but only one at Gary, Indiana and that the Claimants as the senior men on the list were readily available and entitled to the call.

The record shows that the Carrier maintains a force of B&B Employees consisting of 3 foremen, a number of carpenters, masons and helpers at Gary, Indiana. They all gather in the morning at a regular designated point and split into units consisting of a foreman and a number of carpenters and helpers.

The Carrier does not dispute that it has the liberty of shifting these Employees from group to group as it feels desirable although it claims that this is seldom done. On the other hand the Organization claims it is done frequently.

Positions making up the B&B force involved in this case are bulletined to work at Gary, Indiana and new positions and vacancies in existing positions in Group 1 of B&B Sub-Department are assigned at Gary following the bulletins.

Under the facts of this case it is the opinion of this Board that there is only one B&B gang headquartered at Gary, Indiana and that the Carrier was in violation of the contract in making the assignment of overtime as it did. (See Award No. 4531.)

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.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of March 1962.