

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

SOUTHERN PACIFIC COMPANY (Pacific Lines)

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

(1) The Carrier violated the Agreement on March 11 and 12, 1957 when, in lieu of using B&B forces to perform fencing work in the vicinity of 4th and 6th Streets, San Francisco, it assigned the fencing work to Track forces.

(2) B&B Foreman John Carlson, B&B Mechanics George Bur-sick, Nixon Young and Oliver Cinca, B&B Helper Marcus Cerdo and B&B Truck Driver Sherd Baker each be allowed twelve (12) hours' pay at their respective straight time rates account of the violation referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: The claimants hold seniority in the Bridge and Building Sub-department on the Coast Division and are assigned to B&B Gang No. 1 with headquarters located in San Francisco, California. B&B Gang No. 1 works a work week of Monday through Friday, exclusive of holidays, with rest days of Saturday and Sunday. B&B Gang No. 1 performs all the work of the Bridge and Building Sub-department in San Francisco including the building and dismantling of fences.

On the dates of March 11 and 12, 1957 members of Section 1-D was assigned to dismantle a fence of approximately 1000 feet in the area of the old supply depot between 4th and 5th Streets. The fence was constructed of timber posts and woven wire commonly known as "hog wire." This was part of a project including the removal of 1000 feet and rebuilding of 300 feet. Bridge and Building employees rebuilt the 300 feet.

Section forces who performed the work consisted of a foreman, four laborers and a truck driver. No Bridge and Building forces were used in the dismantling of the fence.

The instant claim was presented and progressed in the usual and customary manner. The Carrier has declined the claim.

Division since the adoption of the current agreement, nor was there such a position or gang on that Division for years prior thereto.

Attention is directed to Award 7583 of this Division, which denied a similar claim prosecuted by petitioner.

CONCLUSION

Carrier asks that the claim be denied.

All data herein submitted have been presented to the duly authorized representative of the employees and are made a part of the particular dispute in question.

(Exhibits not reproduced.)

OPINION OF BOARD: On March 11 and 12, 1957 Carrier used a Section Foreman, a Truck Driver and four Laborers to remove 875 feet of woven wire fence in the vicinity of 4th and 6th Streets, in San Francisco, California. The fence was rebuilt by Bridge and Building employees. The claim is on behalf of employees in the Bridge and Building gang who contend that they should be paid for the hours worked at B & B rates because the work belongs to them.

The Employees' position is as follows:

- "1. Fence work is specifically included in the Scope Rule as B & B work and, therefore, B & B Department employees have the seniority right to perform all such work, and
2. The assignment to and performance of such work by employees of another seniority group or class (track forces in the instant case), is in violation of such seniority rights, as a result of which penalties accrue, and must be assessed, in the form of monetary adjustment requested."

An identical issue, involving the same parties, and the same contract provisions has been decided by this Board in Award 11129 (Boyd). We have examined this Award and find nothing palpably wrong with it. The conclusion reached therein applies to the record in the present dispute. It is essential that there be a continuity of decisions. For the same reasons contained in Award 11129, we are obliged to conclude that the Carrier did not violate the Agreement.

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 Employees involved in this dispute are respectively Carrier and Employees 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 did not violate the Agreement.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1963.