

Award No. 13389
Docket No. MW-14585

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Arnold Zack, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

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

(1) The Carrier violated the Agreement when, instead of using the members of B&B Gang No. 4 (Chicago Division) to perform overtime service on October 27 and 28, 1962, it used members of B&B Gang No. 1 on October 27th and used members of B&B Gangs Nos. 1 and 3 on October 28, 1962. (Carrier's file M-956-63).

(2) The members of B&B Gang No. 4 (Foreman L. A. Smith, Carpenters S. O. Nerhus, J. R. Lenzini, W. W. Kays and R. J. Harris, Helpers D. E. Gooden, D. G. Ricci and L. Biondi) each be allowed fourteen (14) hours' pay at his respective time and one-half rate (8 hours for October 27 — 6 hours for October 28).

EMPLOYES' STATEMENT OF FACTS: The claimants were regularly assigned to their respective positions in B & B Gang No. 4, with a work week extending from Monday through Friday (rest days were Saturday and Sunday).

The employees of B & B Gangs Nos. 1 and 3 were also assigned to a work week extending Monday through Friday (rest days were Saturday and Sunday).

During the work weeks immediately preceding and following the rest days of October 27, and 28, 1962, B & B Gangs Nos. 1, 3 and 4 were stationed at or near Cicero, Illinois. B & B Gang No. 4 was assigned to and was repairing a platform at that location. B & B Gangs Nos. 1 and 3 were assigned to and were performing other work in that same area.

Since the Carrier desired to complete the subject platform repair work as soon as possible, it decided to continue work thereon on Saturday, October 27, 1962 and Sunday, October 28, 1962. However, instead of calling

It is particularly significant to note that the claim in this case and in all of the claims involved in Carrier's Exhibits Nos. 9(a) through 13(b), involve the very same issue. That issue is simply this: Is the Carrier required by any agreement provision to use one B&B gang in preference to another for overtime service. The General Chairman answered that question in Carrier's Exhibit No. 6 when he said that the Master Carpenter is within his rights in calling whatever gang he chooses for overtime service. That statement certainly ought to settle the issue once and for all. The General Chairman also answered the question at issue by abandoning identical claims involved in Carrier's Exhibits Nos. 9(a) through 13(b).

In the light of this record, the Board should have no difficulty in reaching a decision denying the claim in its entirety.

In summary, it must be remembered that:

- (1) While the instant claim was being handled on the property, the organization never alleged that the agreement was violated. That allegation was first made in the Organization's letter of advice to the Board that it intends to file a submission.
- (2) No rule has ever been cited by the Organization prohibiting what was done in this case.
- (3) The only thing Carrier was ever accused of while the claim was being handled on the property is the General Chairman's feeling that an "injustice" exists and that "partiality" is shown members of gangs other than Gang No. 4. (Carrier's Exhibit No. 6). In this connection, see Exhibit 10(a) where claim was made that Gang No. 4 was being shown partiality over other gangs.
- (4) Three gangs were used on the work involved at the highway interchange project during the month of October, only one gang was needed on Saturday, October 27 and two were needed on Sunday, October 28.
- (5) There are four separate B&B gangs on the Chicago Division and all of them have seniority over the entire division, they have separate starting points and headquarters.
- (6) Rule 40 provides for the distribution of overtime only between members in the respective gangs to which the overtime work is assigned — it does not provide for distribution of overtime between gangs.

With these facts before it, the Board has no alternative but to deny the claim in its entirety.

(Exhibits not reproduced.)

OPINION OF BOARD: During the work weeks preceding the weekend of October 27 and 28, 1962 Carrier assigned Bridge and Building Gangs Nos. 1, 3, and 4 to work at the Cicero Highway Interchange. They moved building, installed and removed temporary platforms, removed salvage from dismantled buildings, installed permanent platforms, performed bridge work, etc. During the days immediately preceding October 27 and 28, 1962, Gang

No. 4 had been putting in ballast and crushed stone between tracks 4 and 5 to make a temporary platform.

On the disputed days when continuation of this work was required Carrier assigned Gang No. 1 to do it on Saturday, and Gangs Nos. 1 and 3 to do it on Sunday.

The Organization filed the instant claim on behalf of Gang No. 4 which had been doing this work during the preceding week. It alleges a violation of Rule 39(g) which states:

“Where work is required by the Carrier to be performed on a day which is not a part of any assignment it may be performed by an available extra or unassigned employe who will otherwise not have 40 hours of work that week; in all other cases by the regular employe.”

The Organization contends that Gang No. 4 consisted of the regular employes on the assignment and that they are entitled to the earnings lost by virtue of the Carrier's improper assignment of the work to the other gangs.

The Carrier denies the validity of the claim. It points out that the Organization never alleged a violation of any specific rules while this case was being processed on the property; and that even if a timely reliance on Rule 39(g) is held the facts show that the Carrier acted properly. All three gangs handled the same work interchangeably, it argues, and the Carrier has the right to designate any of the crews for overtime assignment. These were all regular employes and therefore, the Carrier concludes, the assignment was proper.

There is no need to examine the question of a varying claim on the property and before the Board for even if the claim were held to be procedurally proper, it is clear that the Organization's claim would fail on the merits.

Three Bridge and Building gangs were working on the Cicero Highway Interchange. The Organization acknowledged in its letter of February 7, 1963 that they held:

“... Division seniority and we have conceded in many instances that the Master Carpenter is within his rights in calling whatever gang he chooses for overtime service.”

Although there might have been an “injustice” against Gang No. 4 in selecting Gangs 1 and 3 for overtime work, it is clear that there was no agreement violation. The parties had considered the several gangs as interchangeable and thus did not reserve any particular tasks or territory to any particular gang. If the Carrier was free to substitute one gang for another during the regular work week it would follow that he could do so on Saturday or Sunday. Gang No. 4 did not have exclusive jurisdiction over the disputed work.

Rule 39(g) protects regular employes in granting overtime assignments. All three gangs were the “regular employes” of the Carrier in the installation and removal work at the Interchange. All three gangs had an equal right to the overtime. The Carrier acted properly in choosing the gangs he did.

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

That the parties waived oral hearing;

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 26th day of February 1965.