



Award No. 15943
Docket No. MW-16363

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Bill Heskett, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

**SOUTHERN PACIFIC COMPANY
(Pacific Lines)**

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

(1) The Carrier violated the Agreement when, on November 14, 20 and 21, 1964, it failed to call and use members of Track Gang No. 8 to perform overtime work on their designated work limits but called and used forces from Powder Gang No. 1, who holds no seniority as track foreman and track laborers, to perform such overtime work.

(2) Track Foreman A. V. O'Hara and Track Laborers M. Beltran, C. Favela, M. M. Quirez and P. Siaz each be allowed twenty-one (21) hours' pay at their respective time and one-half rates because of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The claimants were regularly assigned to their respective positions in Track Gang No. 8, with fixed headquarters at Delta, California. The designated work limits of this gang include the territory from Delta to Lakehead, California. The claimants were regularly assigned to work on Monday through Friday of each week. Saturdays and Sundays were designated rest days.

On Saturday, November 14, Friday, November 20 and Saturday, November 21, 1964, the Carrier called and used Powder Gang Foreman C. R. Drinnon and Messrs. J. Hooper, V. Virela, E. Ayala and E. Balna, who are regularly assigned members of Powder Gang No. 1, to perform the work of unloading and distributing ties, gravel ballast, other track material and track equipment from a work train on the territory from Delta to Lakehead. The members of Powder Gang No. 1 worked from 7:30 A. M. to 4:00 P. M. on November 14, from 4:00 P. M. to 7:00 P. M. on November 20 and ten (10) hours on November 21, 1964, performing the above mentioned track work. For this overtime service they each received twenty-one (21) hours' pay at their respective time and one-half rates.

Claim was timely and properly presented and handled by the Employees at all stages of appeal up to and including the Carrier's appellate officer.

The Agreement in effect between the two parties to this dispute dated July 1, 1964, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS:

1. There is in evidence an agreement (hereinafter referred to as the current agreement) between the Carrier and its employees represented by Petitioner, bearing effective date of July 1, 1964, a copy of which is on file with the Board and is hereby made a part of this submission.

2. On the particular dates involved in this claim, and on dates prior and subsequent thereto, Carrier was operating a work train on Carrier's Sacramento Division between Delta and Lakehead, unloading various items of track material and equipment in connection with severe storm damage in the area.

Working with this train from early November 1964 to late January 1965 were members of Powder Gang No. 1. On the dates claimed, serving on the work train were members of Powder Gang No. 1, consisting of Powder Foreman C. R. Drinnon, Powdermen J. Hooper and L. Virela, plus Track Laborers E. Ayala and E. Balna.

3. By letter dated December 20, 1964, Petitioner's Division Chairman presented claim to Carrier's Division Superintendent on behalf of Extra Gang Foreman A. V. O'Hara and Laborers M. Beltran, C. Favela, M. M. Quiroz, and P. Siaz, members of Extra Gang No. 8, for twenty-one (21) hours each at the rate of time and one-half for alleged violations of the current agreement, especially Rules 1, 3, 5, and 10, when on November 14, 20, and 21, 1964, Carrier deprived and/or denied claimants the right to perform their regularly assigned duties in the Track Department in distributing track material and gravel between Lakehead and Delta, but instead assigned the duties to Powder Gang No. 1 (Carrier's Exhibit A).

By letter dated February 16, 1965, Carrier's Division Superintendent denied the claim on the basis that employees of Powder Gang No. 1 performed no service other than that which they were properly entitled to perform (Carrier's Exhibit B).

By letter dated April 5, 1965, Petitioner's General Chairman appealed the claim to Carrier's Assistant Manager of Personnel, contending violations of Rules 1, 3, 5 and 25 (Carrier's Exhibit C, who denied same by letter dated August 3, 1965 (Carrier's Exhibit D), on the basis that miscellaneous duties in connection with work trains have not in the past been limited to any particular class of employees; that members of powder gangs, who are also in the Track Sub-department, have often been used (when not engaged in powder work) to perform work of this nature, and that members of the powder gang had been used on the work train on dates previous to date of this claim.

(Exhibits not reproduced.)

OPINION OF BOARD: This dispute arose when Carrier assigned Powder Gang No. 1 to unload and distribute material from a work train within the territorial limits of Track Gang No. 8, during overtime hours. Both gangs were members of the same Craft. Carrier established on the property that in addi-

tion to performing the work on overtime the employes in the Powder Gang performed the same work during their regular hours on other days of the week.

There is no provision in Rule 1 (Scope), same being general in nature, granting to Claimants, Track Gang No. 8, exclusivity and there is no rule in the Agreement prohibiting the use of Powder Gang No. 1 by Carrier. The seniority rights claimed by Track Gang No. 8 can only be considered when a right to perform the work is established. Awards 9963 (Weston), 10399 (Mitchell).

Due to the fact that there is no showing of a definite preferential right to the overtime work, the claim should be denied.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

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

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of November 1967.