

Award No. 15944
Docket No. MW-16365

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 28, 1964, it failed to call and use members of Track Gang No. 7 to perform overtime work on their designated work limits but called and used forces from Powder Gang No. 1, who hold no seniority as track foreman and track laborers, to perform such overtime work.

(2) Track Foreman C. H. Funk and Track Laborers W. C. Weseman, L. G. Forbes, Lee Doyle and John Mosley each be allowed eleven (11) 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. 7, with fixed headquarters at Redding, California. The designated work limits of this gang include the territory from Redding 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 28, 1964, the Carrier assigned Powder Gang Foreman C. R. Drinnon and Messrs. J. Hooper, L. Virela, O. Balna and W. T. Cox, who are regularly assigned members of Powder Gang No. 1, to perform the work of unloading ballast, ties, rails and other track materials from a work train on the territory from Redding to Lakehead. These track materials were subsequently used by the claimants in the performance of their regular duties. The members of Powder Gang No. 1 worked from 7:00 A. M. to 6:00 P. M. and were compensated for their services at their respective time and one-half rates. The claimants were available to perform the subject work.

Claim was timely and properly presented and handled by the Employees at all stages of appeal up to and including the Carrier's highest 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 Saturday, November 28, 1964, and on dates prior and subsequent thereto, Carrier was operating a work train on the Sacramento Division between Redding and Lakehead, unloading ballast, ties, rail and other track material, and ditching and spreading mud dumped by air dump cars, all 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 claimed dates, serving on the work train were members of Powder Gang No. 1, consisting of Powder Foreman C. R. Drinnon, Powderman J. Hooper and L. Virela, plus Track Laborers O. Balna and W. T. Cox. Laborers Balna and Cox were being utilized in unloading ballast and picking up ties left behind by tie gang between Lakehead and Mead; members of Powder Gang No. 1 were being used to take care of the ditching and running of the spreader.

3. By letter dated December 16, 1964, Petitioner's Division Chairman presented claim to Carrier's Division Superintendent on behalf of Extra Gang Foreman C. H. Funk and Track Laborers W. C. Weseman, L. G. Forbes, Lee Doyle and John Mosley for eleven (11) hours' each at their respective overtime rates of pay alleging violation of the current agreement, particularly Rules 1, 3, 5 and 10, when on November 28, 1964, it failed to call and use the claimants to perform overtime work in unloading ballast, rail, etc., between the hours of 7:00 A.M. and 6:00 P.M. (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 on November 28, 1964, other than that which they were properly entitled to perform, (Carrier's Exhibit B).

By letter dated March 30, 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 2, 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: The only factual difference between this docket and the circumstances in Award 15943 is the claim date. Therefore, we shall, for the reasons set out in the cited award, deny this claim.

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 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.