



Award No. 15951

Docket No. MW-16379

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Edward A. Lynch, 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 when, on January 9 and 10, 1965, it failed to call and use members of B&B Gang 106 to perform B&B department work but called and used forces from Extra Gang No. 13, who hold no seniority within the B&B department, to perform such work. (System Case No. MotW 152-623.)

(2) Foreman L. B. Schoonover and Carpenters S. E. Strasser, S. A. Webb, R. F. Horner, S. G. Hunter and N. F. Shull each be allowed pay at their respective time and one-half rates for an equal proportionate share of the total number of man hours (128) consumed by Track Department employees in performing the work referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The claimants were regularly assigned to their respective positions in B&B Gang No. 106, with headquarters at Roseville, California. They were regularly assigned to work on Monday through Friday of each week. Saturdays and Sundays were designated rest days.

During the work week commencing on Monday, January 4, 1965, the Carrier assigned the claimants to patrol and repair the drain tunnel located under westbound track at Mile Post 122.78, Auburn, California. However, when it became necessary to perform work of the same character during overtime hours on Saturday, January 9 and Sunday, January 10, 1965, the Carrier called and used the foreman and seven (7) laborers who are regularly assigned members of Extra Gang No. 13 to perform said work. The members of Extra Gang No. 13 performed a total of 128 man hours of work at this work project on the subject dates. They were compensated for their services at their respective time and one-half rates. On Monday, January 11, 1965, the claimants were again assigned to this work project.

By letter dated May 5, 1965, Petitioner's General Chairman appealed claim to Carrier's Assistant Manager of Personnel requesting payment on behalf of Claimants at their respective time and one-half rates of pay for each for proportionate share of 128 hours consumed by employees of the Track Sub-department, alleging violations by Carrier of the current agreement, particularly Rules 1, 2, 5 and 25 (Carrier's Exhibit C).

By letter dated August 3, 1965, Carrier's Assistant Manager of Personnel denied the claim on the basis that cleaning of debris out of culverts, and draining of excess water caused by such clogging is not work reserved to employees of any particular sub-department but is on occasion performed by various classes of employees in conjunction with their other duties (Carrier's Exhibit D).

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier here involved concedes, in its letter denying the claim, that:

"we find it is true that B&B Department forces (the claimants) did work in the subject area during their work week * * *."

This same issue came before Special Board of Adjustment No. 287 (Brotherhood of Maintenance of Way Employees and the Baltimore and Ohio Railroad Company) in its Docket No. 6 with the Referee here sitting.

That Board sustained the claim, citing Second Division Award 1825, which held:

"if Carrier assigns it (the work) to one craft or class from Monday to Friday that class or craft has the same right to the same work if performed on Saturdays and Sundays and Carrier cannot assign it on those days to another craft or class."

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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of November 1967.

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