

Award No. 19139
Docket No. MW-19054

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Robert A. Franden, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
CHICAGO, MILWAUKEE, ST. PAUL AND
PACIFIC RAILROAD COMPANY

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

(1) The Carrier violated the Agreement when it failed and refused to compensate the section laborers assigned to Division Extra Gang No. 2614 at the "current section laborers rate of pay." (System File D-1664/Grievance File 25).

(2) Each claimant who is identified by name in the letter of claim presentation dated 6/24/69 be allowed the difference between what he should have been paid at the "current section laborers rate of pay" and what he was paid at the extra gang laborer's rate of pay for all work performed as a member of Division Extra Gang No. 2614 since May 19, 1969.

EMPLOYEES' STATEMENT OF FACTS: The claimants are the employees who were assigned to fill the sixteen (16) section laborer's positions (subsequently increased to twenty-one (21) positions) which the Carrier advertised within Bulletin No. 17 reading:

"Austin, Minnesota
April 16, 1969
File: 9.61

DIVISION ENGINEER'S
BULLETIN NO. 17
MAINTENANCE OF WAY EMPLOYES
TRACK DEPARTMENT
DISTRICTS NO. 19-21-22 AND
18 MASON CITY AND WEST
20 SIOUX CITY AND WEST
IM&D DIVISION

Applications will be received in the office of the undersigned until 5:00 P. M., Monday, April 28, 1969, for the following positions in Division Extra Gang No. 2614 effective on or about May 5, 1969 to start work on territory of R. E. Gray west of Mason City, Iowa and other

OPINION OF BOARD: Carrier advertised certain positions with Bulletin No. 17 which reads as follows:

"Austin, Minnesota
April 16, 1969

File: 9.61
DIVISION ENGINEER'S
BULLETIN NO. 17
MAINTENANCE OF WAY EMPLOYEES
TRACK DEPARTMENT
DISTRICTS NO. 19-21-22 AND
18 MASON CITY AND WEST
20 SIOUX CITY AND WEST
IM&D DIVISION

Applications will be received in the office of the undersigned until 5:00 P. M., Monday, April 28, 1969, for the following positions in Division Extra Gang No. 2614 effective on or about May 5, 1969 to start work on territory of R. E. Gray west of Mason City, Iowa and other locations as directed by Division Engineer, for a period of six (6) months or less.

Positions	Rate of Pay
Division Extra Gang Foreman	\$610.45 per month.
Asst. Extra Gang Foreman	554.44 per month.
Six (6) Division Machine Operators	583.79 per month.
Sixteen (16) Section Laborers	At current section laborers rate of pay.

Hours of Service: The assigned hours are:

8:00 A. M. to 12:00 Noon & 1:00 P. M. to 5:00 P. M.
daily, except Saturday, Sunday and Legal Holidays.

The Foreman's bid subject to Paragraph (A), Rule 6, Maintenance of Way Schedule.

F. F. Hornig
Division Engineer

cc: WKP BJW WEF KLC LWH WCW REG NJM
DRD EEL RCE RET JWL MRM SET AJR
JLP HFJ PHA."

No bids were received under said bulletin for the Section Laborer positions. The bulletin expired and new men were hired to fill the vacant positions. The Carrier paid the new employes at the Extra Gang Laborers rate of pay. The Organization contends that the newly hired men should have been paid at the higher Section Laborers rate. The Carrier stated that the "Section Laborer" identification in bulletin No. 17 was in error and should have been for "Extra Gang Laborers."

Whether the identification was erroneous is not relevant. There is no basis for the instant claim. The newly hired employes had established no seniority rights which would entitle them to the Section Laborers rate of pay. There is

no contractual basis or basis in the agreement for the claim. We certainly cannot hold that Bulletin No. 17 vested rights in the newly hired employees.

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 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 not violated.

AWARD

Claim denied.

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

**ATTEST: E. A. Killeen
Executive Secretary**

Dated at Chicago, Illinois, this 21st day of April 1972.