

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19496  
Docket Number MW-19363

Thomas L. Hayes, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(St. Louis-San Francisco Railway Company)

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

(1) The Carrier violated the Agreement and understandings between the parties when it discontinued the use of District (Patrol) Gangs 222, 225, 331, 333, 353 and 421 (each consisting of a District (Patrol) Gang Foreman and an Assistant District (Patrol) Gang Foreman) and thereafter used an Assistant District Gang Foreman and a laborer in each of six units to perform the work of District (Patrol) Gangs (System File A-8140/D-5751).

(2) District (Patrol) Gangs 222, 225, 331, 333, 353 and 421 be re-established to work in conformance with the understanding between former Chief Engineer Crosland and former General Chairman Rhyne as confirmed in Mr. Crosland's letter of April 17, 1957.

(3-a) Each employe who, subsequent to the discontinuance of the aforementioned District (Patrol) Gangs, has performed the work theretofore performed by the District (Patrol) Gang Foremen of Gangs 222, 225, 331, 333, 353 and 421 be allowed the difference between what he should have been paid at the District (Patrol) Gang Foreman's rate and what he was paid at the Assistant District Gang Foreman's rate.

(3-b) Each employe who, subsequent to the discontinuance of the aforementioned District (Patrol) Gangs, has performed the work theretofore performed by the Assistant District (Patrol) Gang Foremen of Gangs 222, 225, 331, 333, 353 and 421 be allowed the difference between what he should have been paid at the Assistant District (Patrol) Gang Foreman's rate and what he was paid at the laborer's rate.

NOTE: Part (3) is a continuing claim, to terminate when the violation described in Part (1) is terminated.

OPINION OF BOARD: A letter dated April 17, 1957 from the then Chief Engineer of the Carrier to the Organization set forth a plan to revise the maintenance set-up on the Cherokee, Creek and Oklahoma Subdivisions of the Southwestern Division stating in part, that certain district gangs would consist of a district gang foreman and assistant district gang foreman.

Shortly thereafter, in a few instances, a laborer or truck driver was assigned to patrol gangs contrary to the letter of April 17, 1957. The then General Chairman Rhyne protested these assignments and pointed out that such gangs should consist of a foreman and assistant foreman only. After receiving the General Chairman's protest, O. E. Fort, then Assistant Chief Engineer, Frisco, addressed a letter to all Division Engineers stating in part as follows:

" \* \* \* \* \*

Have been receiving complaints from Mr. Rhyne about assigning laborers or even truck drivers, to the patrol district gang. This was not the intention and there are to be no laborers used in the patrol district gang except in the case of an emergency where it would be permissible to pick up the eldest cut off laborers, if possible, to take care of the short duration of emergency. (Emphasis ours)

Thirteen years later, in 1970, Carrier abolished District Patrol Gangs consisting of a foreman and assistant foreman. Thereafter the work previously performed by the District Patrol Gangs was assigned and performed by a newly created assistant district gang foreman position, assisted by a laborer from one of the available gangs.

In the opinion of the Board, the evidence of record would lead reasonable men to agree that Carrier and the Organization regarded the letter dated April 17, 1957 as reflecting accurately their agreement relative to the work of patrolling track at certain points. Our view in this regard is in harmony with the practice supported by the parties for many years as well as the communication dated April 17, 1957 and the subsequent letter dated August 9, 1957 from O. E. Fort to all Division Engineers.

As this Division held in Award 2436 (Carter):

"The conduct of the parties to a contract is often just as expressive of intention as the written word and where uncertainty exists, the mutual interpretation given it by the parties as evidenced by their actions with reference thereto, affords a safe guide in determining what the parties themselves had in mind when the contract was made."

The contention of Carrier that the letter of April 17, 1957 was signed by a Carrier Officer who was not authorized to enter into contractual arrangements was never raised during the handling on the property and is not an argument which the Board may consider. Moreover, the objection of Carrier to the effect that the failure to identify the Claimants does not satisfy the rules is found to be without merit since the claimants can easily be identified by Carrier.

We have reviewed other objections by Carrier to the allowance of the instant claims and do not find them persuasive.

All claims are allowed without interest.

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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 violated.

A W A R D

Claims sustained per the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

E. A. Killen  
Executive Secretary

Dated at Chicago, Illinois, this 17th day of November 1972.