

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22433
Docket Number MW-22304

Abraham Weiss, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way **Employes**
(Fort Worth and Denver Railway Company

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

(1) The Carrier violated the Agreement when it failed to allow extra gang **employes** working at Vernon, Texas \$7.00 per day for meals and lodging (System File F-9-76/W-29).

(2) Extra gang employes listed* and any other gang **members** not listed or hired at a later date each be allowed \$7.00 **per** day **beginning** 60 days retroactive from August 24, 1976 and to **continue** until said violation is **corrected**.

*M. Lindley
C. A. Golden
N. J. **Torvell**
J. A. Rich
R. C. Kinner
J. L. Culipher
J. L. Smith
D. M. **Pickrel**
E. I. Bushing

J. A. **Brubaker**
M. A. **Smith**
M. A. Schmidt
S. Skipworth
D. Maxwell
E. **Kelley**
D. J. **Simons**
J. W. **Norwood**
N. J. Cross"

OPINION OF BOARD: The record establishes that Carrier initiated a track maintenance program in June 1976 at Vernon, Texas. In connection **therewith**, the company added to the crew **assigned** to such work **by** hiring three **new** laborers and by transferring five other laborers "who were cut off other section groups **in** force reduction." At about the **same** time, three machine operators, **who** have system-wide seniority, moved onto the Vernon section with their machines. The **machine** operators were paid \$7.00 per day for **meals** and lodging; the laborers were not, and a claim was accordingly filed for per diem payments for the laborers **on** the grounds that

"The tie gang now Located at Vernon, Texas is in reality an extra gang which is being moved from section to section **originating in** die Petersburg, Texas area when the tie inserting program is finished at one location,, the extra employees on that section or gang are notified of force reduction, they are then advised that forces are to be increased at next location and they can place themselves there."

Petitioner **claims** a violation of a - - o f **Agreement** dated December 19, 1975 which provides, in part:

"1. This agreement **applies** only to employees assigned to extra gangs. Extra gangs may be designated as tie gangs, "

* * *

"3. Employees assigned to extra gangs will be allowed \$7.00 per day for meals and lodging for each full day worked as a member of a gang. "

Petitioner alleges that the "tie gang first established at Petersburg was never intended as a headquarters gang" but that "its establishment as a part of a so-called track section is a subterfuge to avoid the payment of the \$7.00 per diem allowance,"

Carrier denied the existence of an Extra Gang, holding that the gang at Vernon was at all times a section gang, and was not converted to an extra gang, as alleged by Petitioner; that the three new employees hired were hired as trackmen on the Vernon s - g a n g and not on a tie or extra gang; that the remaining 5 employees, who were transferred, joined the Vernon section gang as individuals on varying dates from May 25 to June 15, 1976, from two section (not extra) gangs; and that section gangs are expressly excluded in the December 19, 1975 Memorandum of Agreement by the following provision:

"1. This agreement applies only to employees assigned to extra gangs."

Finally, Carrier maintains that the increase or decrease in the size of the section gang cannot operate to change its status or classification.

The question before us, therefore, is: Was the **gang** at **Vernon, Texas** a section gang or was it an extra gang?

AS we read the record, there is no evidence that the company established an additional or extra gang when it embarked upon its tie-renewal program. Bather, the **Vernon** section gang was enlarged by the addition of new employes **and** by **employes** transferred from other section gangs. Such augmentation does not Per se, change the Vernon section **gang** to that of **an** extra **gang**.

Petitioner has failed to meet the burden of proof required to demonstrate that the enlarged crew was designated (or considered) a tie or extra gang. The Carrier, in its first denial letter dated **October** 15, 1976, asserted that the extra gang alleged by Petitioner was nonexistent, and this statement was never controverted by evidence of probative value. The company consistently denied that the group in question constituted an extra **gang**. No evidence has been presented that the work crew involved herein was other than a section group or gang, as claimed by Carrier, nor was proof submitted by Petitioner that the crew was titled or characterized as **an** extra or tie **gang per se**. Absent such evidence, Petitioner cannot sustain its unilateral designation of the crew as a tie gang or extra gang.

Inasmuch as we can **find no** evidence in the record that an assigned extra **gang** was operating at Vernon, Texas at the time, and that the Claimants were members of such a gang, the claim predicated upon the alleged existence of such a **gang must** fall. Furthermore, there being no shoving of the existence of such an extra **gang**, the compensation sought **in** this case must be denied, since the 1975 Memorandum of Agreement applies only to employes assigned to extra gangs. The claim, therefore, **must** be denied.

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 Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

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That ~~this~~ Division of the ~~Adjustment Board~~ has " ~~jurisdiction~~
over the dispute involved ~~herein~~; and

That the Agreement was not Violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A.W. Pauls*
Executive Secretary

Dated at Chicago, Illinois, this 15th day of June 1979.