

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 22846
Docket Number **MW-22856**

George E. **Larney**, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employes
(The Baltimore and Ohio Railroad Company

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

(1) The Agreement was violated when, on December 13, 1977, the Carrier called and used Messrs. **J. H. Allman**, Joseph **Yakupcak**, Steve **Yakupcak** and C. C. Ball for overtime service at about M.P.57 instead of calling and using Foreman Charles E. Hartley, **Trackman** J. W. Gibson, C. R. Wyer and G. Fluharty (System File **NEW-1048/2-MG-2083**).

(2) As a consequence of the aforesaid violation Foreman Charles E. Hartley and **Trackman** J. W. Gibson, C. R. Wyer and Gary Fluharty shall each be allowed four and one-half (**4-1/2**) hours of pay at their respective time and one-half rates."

OPINION OF BOARD: On December 13, 1977, a track joint pulled apart at Mile Post 57, located about five (5) miles west of Cambridge, Ohio and about twenty-one (21) miles east of Zanesville, Ohio. In order to effect the necessary repairs, the Carrier called and used the Cambridge Line Gang.

It is the Organization's position that Carrier **violated** Rule **24(e-1)** of the Controlling Agreement bearing effective date of October 1, 1968, when it utilized the Cambridge Line Gang to effect the repairs rather than calling the Zanesville Line Gang. This rule reads as follows:

"RULE 24

OVERTIME

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(e-1) When overtime service is to be performed on a territory assigned to a Section Gang and an **Extra Gang**, the Foreman of the Section Gang will be given first preference. If the Section Gang Foreman is not available or if additional forces are required, the Extra Gang Foreman will be called. In the event employees assigned to the Section Gang are not available, employees assigned to the Extra Gang may be utilized up to number assigned to the Section Gang, without calling Extra Gang Foreman."

The Organization maintains that Rule **24(e-1)**, clearly sets forth the procedure for calling and using employees assigned to a section territory for overtime service specifically stipulating that the foreman assigned to the section territory will be given first preference to perform overtime service. The Organization asserts that the Zanesville Line Gang is assigned the territorial limits between Mile Post 52.5 to Mile Post 82 on the Central Ohio Sub-Division of the Ohio Division of the Carrier and supports this assertion by reference to a document identified as Letter No. 1.

The Carrier on the other hand argues that Rule **24(e-1)** was substantially modified when the parties **entered into** a **Memorandum** of Agreement dated August 7, 1975. That **Memorandum**, the Carrier maintains, effected a **realignment** of the Carrier's track forces by consolidating the seniority rosters of Carrier's Subdivisions N-1, N-2, N-3, N-4, N-5, **and** N-6, into one (1) North End Seniority Roster. In conjunction with this consolidation, according to the Carrier, track forces were reclassified by establishing (a) yard gangs, (b) line gangs, and **(c)** production gangs and seniority districts were expanded. As a result, those employees who formerly worked on the subdivisions and had their seniority rights restricted thereto, acquired expanded work opportunity. Thus, prior to the August 7, 1975 Agreement **the** Cambridge Gang was restricted to work within the territory of Sub-Division No. 1 while the Zanesville Gang was restricted to work within the territory of Sub-Division No. 2. According to the Carrier, the August 7, 1975 Agreement provided that those employees, with seniority rights previously established on the **former** subdivision, would acquire "prior rights" to positions advertised with headquarters on their former subdivision but that nothing in the Memorandum Agreement gave those employees "prior rights" to work that might be **performed on** the former subdivision. This being so, the Carrier **asserts** that the August 7, 1975 Agreement and not Rule **24(e-1)** is controlling in determining which gang, under the circumstances, would have preference to overtime service at a given location.

Under the circumstances at bar, the Carrier asserts that the "test" in determining which of the two line gangs would have preference to the overtime service required to effect repairs at Mile **Post 57 is, that gang which ordinarily performs maintenance** in the area. Such a test **was** applied by Carrier in the instant case and Carrier determined that the Cambridge Line Gang and **not** the Zanesville Line Gang was to be called **and** used to effect the **repairs**.

The Board notes **in** its review of the instant case that the document referred to by the Organization as Letter No. 1, notwithstanding its possible relevance to the claim is, **in** fact, new evidence and as such cannot be considered by us at this appellate level. Absent **consideration**

of Letter 1, it is our determination the Organization has failed, on account of lack of proof, to show a Contract violation based on the relationship between the **Zanesville** Line Gang and the territory in question and therefore we find we most dismiss the claim.

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;

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 dismissed.

NATIONAL RAILROAD **ADJUSTMENT BOARD**
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 16th day of May 1980.