

The Third Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Terminal Railroad Association of St. Louis

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

(1) The Carrier violated the Agreement when it assigned junior Track Laborer G. Evans and junior Truck Operator J. Mason instead of Track Laborer M. Hudson and Truck Operator T. Whitley, Jr. to perform overtime snow removal work at Madison, Illinois on January 9 and 10, 1987 (System Files 1987-4/013-293-19 and 1987-5/013-293-19).

(2) As a consequence of the aforesaid violation, Track Laborer M. Hudson and Truck Operator T. Whitley, Jr. shall each be allowed pay at their respective rates for eight (8) hours at the time and one-half rate and six (6) hours at the double time rate."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The basic facts in this case are set forth as follows: On January 9, 1987, Carrier assigned all of its rail gangs to perform snow removal work at Madison, Illinois. It later necessitated overtime work and beginning at 4:00 P.M., Carrier assigned Gang #6 to work overtime until 6:00 A.M. the following morning. It was the Organization's position that since two (2) employees who were part of Gang #6 were required to work overtime over two (2) senior employees assigned to Gang #7, said assignment violated Rule 31 (g) of the controlling Agreement. In other words, the Organization asserted that since all of the involved employees were working on the same job, Carrier was obligated to continue the senior employees on the overtime assignment. More pointedly, it observed that the first portion of Rule 31(g) was directly applicable to these facts. This Rule reads:

"(g) Overtime work required following and continuing with the regular eight (8) hour work period shall be performed by the necessary senior employee working on the job.

Senior available employees will be given preference in performing overtime work on call basis within the jurisdiction of their respective seniority groups (gang involved in Track Sub-Department)."

The Carrier maintained that since Gang #6 was required to perform the overtime snow removal work, it kept said gang intact consistent with past practice and Rule 31(g). Furthermore, it contended that the Organization never challenged its position of past practice on the property and to do so via the Ex Parte Submission was an impermissible violation of the Board's Rules. It asserted that keeping whole a system gang to work overtime on snow removal work was not unusual or a first time novel work assignment.

In considering this case, the Board concurs with Carrier's position. Firstly, the Organization never challenged Carrier's past practice assertions on the property while the Claim was progressed. This is particularly evident with respect to Carrier's July 1, 1987 denial letter. In said letter, Carrier contended that the force deployment observed on the claimed dates was the traditional historic method used to perform snow removal work, but said contention was not addressed in the Organization's August 7, 1987 appeals letter. Such position, at least by the appeals paper trail of this record appears to have been first raised in the Organization's Ex Parte Submission. Secondly, there is no evidence indicating that gangs were previously split on overtime snow removal work in accordance with the first portion of Rule 31(g) and no Divisional case law cited dealing with identical or similar facts. As the petitioning party, the Organization has the burden of proving a Rule violation, but upon this record, we cannot agree with the Organization's contentions.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of August 1990.