

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 28678  
Docket No. MW-28678  
91-3-89-3-33

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

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

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

(1) The Agreement was violated when the Carrier moved Regional B&B Gang 820 off of its assigned territory to Bridge Nos. 488.2 and 28.9 while it assigned Regional B&B Gang 823 to perform program repairs at Bridge No. 783.7 from June 11, 1987 through September 17, 1987 (System File B-2369/EMWC 87-11-23A).

(2) Because of the violation referred to in Part (1) above:

'... we request that Gang 820 be paid at their respective rates of pay for all hours Gang 823 worked on programmed jobs back 60 days of their claim thru September 17, 1987.'

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 employee 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.

Bridge and Building Gangs 820 and 823 are Regional Gangs established under the Agreement dated January 24, 1983, which reads in pertinent part as follows:

"(1) Regional Bridge and Building Gangs may be created to perform any or all types of work, classified as bridge and building work or steel bridge work, which is performed by Division Bridge and Building Gangs, or by Region (System) steel gangs. Such gangs may be worked on Seniority District 1, 2, 3, 4, 5, 6, and 7 of the former S.L.-S.F. Ry. Co.

...

\* \* \* \*

(9) Any information contained on the bulletins concerning the anticipated schedule of work for the gang shall be for information only, shall be subject to change without notice, and shall not constitute a guarantee that the gang will perform the work specified. . . .

\* \* \* \*

(18)(a) Insofar as practicable, the Carrier will schedule programmed work for the Regional B&B Gangs to be performed on designated territories. Such Regional B&B Gangs will perform all programmed work on said designated territories before being moved to other districts, except in emergencies or where not possible to complete a project at the time. It is understood that Regional B&B Gangs will not be used to perform the work of Division B&B Gangs as specified in paragraph (2) above, and that Division B&B Gangs will not be substituted for Regional B&B Gangs to perform programmed work to avoid payment of higher rates of pay."

Claimants are members of Gang 820 who, in 1987, were assigned work at Memphis, Tennessee, while Gang 823 was simultaneously assigned work in Alabama. The Organization contends the Gang 820's "designated territory" included Alabama, while Gang 823's "designated territory" was elsewhere.

The Board finds no basis to conclude that Gang 820 had prior rights to the Alabama work, under the circumstances here involved. Both Gangs had been assigned to programmed work in Alabama prior to the Claim herein. The assignments were made in a practical manner based on the Gangs' current working locations and the Carrier's priorities.

A position bulletin issued in 1983 states in reference to Gang 820, "Designated territory is Alabama, Florida & Mississippi." The effect of this is negated, however, by paragraph (9) of the January 24, 1983 Agreement.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1991.