

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29533
Docket No. MW-29039
93-3-89-3-463

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
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier assigned six (6) Group 18 Extra Gang Laborers instead of Nebraska Division Sectionmen to perform work customarily recognized as Sectionmen's work (installing and spiking ties) at various locations on the Nebraska Division on April 25, 27, 28, 29, May 2, 3, 4, June 6, 7, 8, 9 and 10, 1988 and continuing (System File S-30/880486).

(2) As a consequence of the aforesaid violation, Nebraska Division Sectionmen J. P. Silva, L. H. Hans, C. L. Wilcox, S. Desantiago and R. W. Jacobi shall each be allowed pay at their respective straight and overtime rates for an equal proportionate share of all straight and overtime hours expended by Group 18 Extra Gang Laborers performing the Sectionmen's work identified in Part (1) above."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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 Claimants were Sectionmen in furloughed status. The Claim states that on 12 dates in April-June 1988, the Carrier assigned Extra Gang Track Laborers to perform routine Sectionman's track maintenance work, assisting a track maintenance gang, the work involved being installation and spiking of crossties. The Organization states that the work was performed by six Extra Gang Laborers assigned to Gang 4985. The Organization contends the Claimants were entitled to be recalled for the work.

Contrary to the Carrier's view, the Board finds no meaningful defect in the fact that the Organization substituted one Claimant for another at the early stages of the Claim handling procedure.

The Organization relies on Rule 13, Section II (a), which states that "(p)ositions on track maintenance gangs will be filled from the regular classifications of the Track Subdepartment from the ranks of sectionman and above", and Section II (c), which states that "extra gangs engaged in work not customarily done by section gangs...will not be worked in the place of regular section gangs."

Reference is also made to Rule 9 (v), defining the work of Track Laborer Extra Gang, as follows:

"Employees assigned on extra gangs engaged in new construction or work not customarily done by section gangs such as reballasting, rail relay, tie renewals, bank widening, grade and line changes or emergency work occasioned by inclement weather, derailments or other natural disasters."

The Carrier, on the other hand, contends that the Extra Gang employees were being utilized in connection with a major project "to work with the System Surfacing Gang installing ties and dumping ballast." At a later point in the Claim handling procedure, the Carrier stated that the Extra Gang Laborers "worked with a system gang and clearly they were not performing work normally done by section forces, but work done by system forces."


At issue throughout the dispute was the identification of the particular Extra Gang Laborers who allegedly performed work in place of the Claimants. Names were provided by the Organization only during final conference.

The Board is faced with virtually irreconcilable statements of fact -- whether the Extra Gang Laborers were simply performing routine Sectionman work installing ties or whether they were used in conjunction with System Gang work of a nature differing from routine track maintenance. While names of such Extra Gang Laborers were eventually provided, this provided no opportunity for timely discussion of such conflicting assertions. In this circumstance, the Board is without sufficient guidance to resolve the matter.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 3rd day of February 1993.