

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30002
Docket No. MW-29502
94-3-90-3-433

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
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(Union Pacific Railroad Company

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

- (1) The Agreement was violated when the Carrier failed and refused to permit Foreman M. G. Jones to work regular first shift hours with a starting time no later than 8:00 A.M. and instead required him to work second shift hours from 3:30 P.M. to 12:00 midnight (Monday through Friday) beginning May 30, 1989 (System File S-187/890647).
- (2) As a consequence of the aforesaid violation, Mr. M. G. Jones shall be allowed:

'...the difference between the straight time rate and the overtime rate for all services rendered from 4:30 p.m. to 12:00 midnight each Monday, Tuesday, Wednesday, Thursday and Friday since and including May 30, 1989. Additionally, it is claimed that Mr. Jones must be allowed at his applicable straight time rate seven (7) hours' pay for each Monday, Tuesday, Wednesday, Thursday and Friday since and including May 30, 1989, as he has been deprived of the right to perform service during the contractually designated work hours of 8:00 a.m. to 3:30 p.m. on each of those days. This claim will continue until this violation of the Agreement by the Carrier ceases to exist.'"

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 employe 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.

Gang 6066 had been established at Pocatello, Idaho with day shift hours and Saturday-Sunday rest days. In April 1989, the Carrier established Gang 6067, also at Pocatello and with Saturday-Sunday rest days, but with hours of 3:30 p.m. to 12 Midnight. The Claimant herein was assigned as Foreman on Gang 6067. The Organization argues that the Carrier improperly assigned the Claimant to the second shift, contending that he was working a "single shift."

Rule 31 reads in pertinent part as follows:

- "(b) Employees working single shifts, regularly assigned exclusively to day service, will start work period between 6:00 A.M. and 8:00 A.M.
- (c) Where two shifts are employed, the starting time of the first shift shall be between the hours of 5:00 A.M. and 8:00 A.M., and the starting time of the second shift shall be between the hours of 1:00 P.M. and 4:00 P.M."

The Carrier argues that it is simply exercising its right to establish a second shift Gang at Pocatello, the hours of which are covered under Rule 31 (c). In response, the Organization contends that Gang 6066 is of a different nature than Gang 6067. However, bulletins establishing the Gangs show no such distinction. The Board finds no Rule violation in the assignment of Gang 6067 (and the Claimant) to the second shift.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 21st day of January 1994.