

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 30812
Docket No. MW-29107
95-3-89-3-544

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Burlington Northern Railroad Company
((former SLSF)

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

- (1) The Agreement was violated when the Carrier improperly established Gang 542 by bulletin dated October 27, 1988 with a foreman and trackman driver position instead of a trackman position. (System File B-1122-1/EMWC 89-1-12 SLF)
- (2) As a consequence of the violation referred to in Part (1) hereof, trackman R. R. Wright shall:

'... be paid for all time lost, plus travel time and mileage for all time and miles Mr. Wright travels due to the violations.

We further request that Mr. Wright be paid the above for as long as the Carrier continues to violate the above rules.'"

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.

Claimant held an Assistant Foreman's position on Gang 531 headquartered at Perry, Oklahoma. Gang 531 was a two man gang consisting of Claimant and a Foreman. Gang 531 had an area of responsibility extending from M.P. 432 to M.P. 533. Gang 531 installed ties, gauged tracks, surfaced tracks, cut vegetation, changed out rails, switch points and frogs, built and repaired fences, unloaded and distributed material for regional gangs, track, repaired grade crossings, maintained and replaced signs, unloaded ballast, and dismantled abandoned spur tracks. According to the Carrier, about 30% of the time was spent patrolling track and a preponderance of the Assistant Foreman's work came under the scope of Trackman's duties.

Gang 531 was abolished by the Carrier effective end of shift October 14, 1988 and was replaced with a mobile maintenance gang, Gang 542, with one Foreman and one Trackman and with headquarters at Pawnee, Oklahoma.

According to the Carrier, Gang 531 was abolished in order to move gang headquarters to a central location (Gang 542 was bulletined at Pawnee, Oklahoma, which is located at M.P. 478 as opposed to Perry which is located at M.P. 509) and to save money in that there would be a Trackman as opposed to an Assistant Foreman on the gang.

Claimant (who lives in Perry) did not bid on the Trackman's position on Gang 542 or to another Trackman's position on Gang 530 located at Enid, Oklahoma. Instead, Claimant bumped to a position on Regional Gang 525 headquartered at Tulsa, Oklahoma.

After Claimant exercised his seniority to Gang 525, and because of complaints by other Maintenance of Way employees, the trackman position on Gang 542 was changed by bulletin dated October 27, 1988 to provide for a trackman-driver. The Organization now claims that action was improper.

The Organization has not carried its burden.

First, there is no evidence that the Carrier bulletined Gang 542 in a manner so as to frustrate Claimant's ability to bid on that gang. While Claimant may not have held trackman-driver's seniority, at the time Gang 542 was first bulletined, it was bulletined for a trackman, for which Claimant did hold seniority.

Rather than bid on that position, Claimant chose to displace onto the position on Gang 525. It was after Claimant displaced to Gang 525 that the trackman position on Gang 542 was re-bulletined for a trackman-driver. Thus, there is no evidence that the Carrier in any way targeted Claimant as he asserts. No retaliation has been shown.

Second, Rule 27(a) states:

"(a) When patrol and inspection of other than yard tracks requiring the use of an on-track vehicle is performed by other than supervisors, it will be performed:

* * *

(2) By a foreman and/or assistant foreman, accompanied by one or more trackman who return to their headquarters point each day."

The record does not fully support the Organization's contention that the "trackman" referred to in Rule 27(a)(2) cannot in this case be filled by an employee who, in addition to being a "trackman" is also a "trackman-driver". See Rules 18(a)(4) ("When motor vehicles for use on the highway are assigned to a gang ... for the purpose of transporting men and material in connection with their work, one or more positions of trackman-driver shall be established in each such gang If no qualified employee with trackman-driver seniority bids on the bulletined position, the senior qualified laborer making application shall be assigned") and 18(a)(6) ("trackman-drivers shall be working employees in the gang and will perform work as trackman when not being used in the capacity as trackman-driver.").

But, giving the Organization the benefit of the doubt that when Rule 27(a)(2) says "trackman" it does not mean anything more, the record shows that the only reason that the Carrier re-bulletined the trackman position on Gang 542 for a trackman-driver was because of assertions by Maintenance of Way employees that the gang had to have a trackman-driver. The Organization cannot successfully argue that the Carrier violated the Agreement by complying with those wishes.

Under the facts presented in this case, the claim will be denied.

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AWARD

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 27th day of April 1995.