

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32415
Docket No. MW-32135
98-3-94-3-551**

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

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Chicago and North Western Transportation Company**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned six (6) employees of RC 759 Interdivisional Surfacing Gang to repair tracks at the old M&StL Yards in Albert Lea, Minnesota on June 22, 1993, instead of assigning the Albert Lea, Minnesota Section Crew to perform said work (System File 2PG-3578T/81-93-142).**
- (2) The Agreement was violated when the Carrier assigned ten (10) employees of RC Buc No. 1 Interdivisional Gang and six (6) employees of RC 759 Interdivisional Surfacing Gang to repair tracks at the old M&StL Yards in Albert Lea, Minnesota on June 23 and 24, 1993, instead of assigning the Albert Lea, Minnesota Section Crew to perform said work.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Section Foremen G. M. Linde, S. M. McBride and Trackman C. R. Jackson shall each be allowed pay for an equal proportionate share of the three hundred eighty (380) hours expended by the interdivisional gangs at their respective straight time rates of pay."**

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 were given due notice of hearing thereon.

Claimants here are section gang members assigned to the Albert Lea Section. The Organization asserts that interdivisional gangs performed the work of section gangs in violation of Rule 49.

According to the Carrier, the Interdivisional gangs did not perform Claimants' work. Rather, according to the Carrier:

"... Due to the emergency conditions caused by the massive flooding, the Carrier needed to augment certain crews in order to keep its operation running and in doing so, the members of the RC 759 Interdivisional Gang and the RC Buc #1 Interdivisional Gang were required to perform capital project work. The switches removed by these gangs were removed to provide material for the construction of new panel switches which were subsequently built by these employees. ..."

The Organization offers as rebuttal that Claimants routinely perform this work and specifically performed that type of work during 1993. With respect to the alleged emergency, the Organization points out that the former M&StL Yard in Albert Lea was not subject to any flood waters and the work performed by the interdivisional gangs had nothing to do with high water or flood damage.

This dispute is similar to the sustained claim in Third Division Award 32414. We shall also sustain this claim.

Rule 49 is clear stating that "Interdivisional gangs may be established to perform programmed rail and/or tie renewal and ballast work . . . [but] will not be used in lieu of regularly assigned section gangs to perform work customarily performed by said section gangs on their respective section territories." Taking the work as described by the Carrier in this case, as in Award 32414, the work performed by the interdivisional gangs appears to be work of the type performed by section gangs. From this record, the type of work described by the Carrier as "capital project work" of removing switches appears to be section gang work of the type which has been performed by Claimants. But most importantly, in light of the Organization's showing, the Carrier has not shown in rebuttal that the work is "programmed rail and/or tie renewal and ballast work" as required by Rule 49. Rule 49 is further clear that interdivisional gangs "will not be used in lieu of regularly assigned section gangs to perform work customarily performed by said section gangs on their respective section territories." But, from what is before us, that is what happened here.

The Carrier has also not sufficiently established the existence of an emergency. Albert Lea was not subject to flood waters. Further, assuming the ultimate product produced by the dismantled switches was needed elsewhere in the system because of flooding at those locations, the Carrier has not shown that the work was needed on a basis of such immediacy that the type of work involved could not have been performed by section gang personnel at a later time or on an overtime basis.

As a remedy and for reasons stated in Award 32414, Claimants lost work opportunities as a result of the Carrier's violation of the Agreement. Claimants must be made whole for those losses. Therefore, Claimants shall each be paid a proportionate share of the hours worked by the interdivisional gangs on the dates covered by the claim. Because the claim seeks payment at the straight time rate, that rate shall govern.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 21st day of January 1998.