

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32912
Docket No. MW-31807
98-3-94-3-73**

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: (
(Grand Trunk Western Railroad Company (formerly
(The Detroit, Toledo and Shore Line Railroad Company)**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned employees covered by the Grand Trunk Agreement to perform track maintenance work (remove old rail and install new rail) from Vienna Road to Lang Yards, which is on Detroit, Toledo and Shore Line property, beginning October 5 through 23, 1992 (Carrier's File 8365-1-405 DTS).**
- (2) The Agreement was further violated when the Carrier assigned employees covered by the Grand Trunk Agreement to perform track maintenance work (remove, build and install new switches) at Plum Creek, Monroe, Michigan, which is on Detroit, Toledo and Shore Line property, beginning October 12 through November 19, 1992 (Carrier's File 8365-1-406).**
- (3) The Agreement was further violated when the Carrier assigned employees covered by the Grand Trunk Agreement to perform track maintenance work (remove and install ties) at D. Road Yards and Michigan to Lang Yards, Toledo, Ohio, which is on Detroit, Toledo and Shore Line property, beginning September 21 through November 5, 1992 (Carrier's File 8365-1-407).**

- (4) The Agreement was further violated when the Carrier assigned employees covered by the Grand Trunk Agreement to perform track maintenance work (remove old switchties and install new ties) in and around Lang Yards, Toledo, Ohio, which is on Detroit, Toledo and Shore Line property, beginning November 4 through 25, 1992 (Carrier's File 8365-1-418).
- (5) The Agreement was further violated when the Carrier assigned employees covered by the Grand Trunk Agreement to perform track maintenance work (surfacing track) at the south end of Lang Yards, Toledo, Ohio, which is on Detroit, Toledo and Shore Line property, beginning November 2 through December 10, 1992 (Carrier's File 8365-1-419).
- (6) As a consequence of the violation referred to in Part (1) above, Foremen M. H. Venier, F. M. Watters, M. S. DeCant, Assistant Foreman E. D. Merrell, Machine Operators F. Hammac, R. M. Rose, R. R. Paredes, B. K. Elmer, T. J. Neagley, D. D. Thomas, J. P. Boyle, M. J. Stamm, D. G. Webster, R. C. Beavers, K. E. Jackson, R. L. Kirkendall, J. Comage, S. R. Yeary, D. S. Bock, D. J. McLean, S. V. Reeves, Fuel Truck Driver O. Rose, Mechanic Truck Drivers J. D. Watson, P. J. Sykes and Truck Driver T. L. Konowalski shall each be allowed ninety-six (96) hours' pay at their respective straight time rates and thirty-two (32) hours' pay at their time and one-half rates.
- (7) As a consequence of the violation referred to in Part (2) above, Foreman M. H. Venier shall be allowed two hundred (200) hours' pay at his straight time rate and sixty-two (62) hours' pay at his time and one-half rate, Assistant Foreman F. M. Watters shall be allowed one hundred sixty (160) hours' pay at his straight time rate and twenty (20) hours' pay at his time and one-half rate, Machine Operator F. Hammac shall be allowed two hundred ten (210) hours' pay at his straight time rate and ten (10) hours' pay at his time and one-half rate, Welder J. D. Watson shall be allowed two hundred (200) hours' pay at his straight time rate and ten (10) hours' pay at his time and one-half rate, Welder Helper R. M. Rose shall be

allowed one hundred sixty (160) hours' pay at his straight time rate and two (2) hours' pay at his time and one-half rate, Trackman B. K. Elmer shall be allowed one hundred sixty (160) hours' pay at his straight time rate and ten (10) hours' pay at his time and one-half rate and Trackmen M. S. DeCant, R. R. Paredes, E. D. Merrell, T. J. Neagley, D. D. Thomas and P. J. Sykes shall each be allowed two hundred (200) hours' pay at their straight time rates and ten (10) hours' pay at their time and one-half rates.

- (8) As a consequence of the violation referred to in Part (3) above, Foreman M. H. Venier, Assistant Foreman F. M. Watters and Machine Operators R. R. Paredes, F. Hammac, E. D. Merrell, R. M. Rose, M. S. DeCant, T. J. Neagley, O. Rose, J. D. Watson, P. J. Sykes, D. D. Thomas, S. R. Yearly, B. K. Elmer, J. P. Boyle, M. J. Stamm and D. G. Webster shall each be allowed two hundred twenty-four (224) hours' pay at their respective straight time rates and sixty-four (64) hours' pay at their respective time and one-half rates and Trackmen R. E. Beavers, K. E. Jackson, R. L. Kirkendall, J. K. Comage, T. L. Konowalski, D. S. Bock and D. J. McLean shall each be allowed two hundred twenty-four (224) hours' pay at their trackman's straight time rate and fifty-six (56) hours' pay at their time and one-half rate.
- (9) As a consequence of the violation referred to in Part (4) above, Foreman M. H. Venier shall be allowed one hundred twenty-four (124) hours' pay at his straight time rate and thirty-four (34) hours' pay at his time and one-half rate, Tie Injector Operator M. DeCant and Tie Crane Operator F. Hammac shall each be allowed one hundred twenty-four (124) hours' pay at their respective straight time rates and thirty-two (32) hours' pay at their time and one-half rates, Trackman O. Rose shall be allowed one hundred twenty-four (124) hours' pay at his straight time rate and twenty-three (23) hours' pay at his time and one-half rate, Trackman R. Rose shall be allowed one hundred sixteen (116) hours' pay at his straight time rate and twenty-three (23) hours' pay at his time and one-half rate and Trackman J. Watson shall be allowed one hundred eight (108)

hours' pay at his straight time rate and twenty (20) hours' pay at his time and one-half rate.

- (10) As a consequence of the violation referred to in Part (5) above, Foreman M. H. Venier shall be allowed two hundred eight (208) hours' pay at his straight time rate and seventy-eight and one-half (78.5) hours' pay at his time and one-half rate, Tamper Operator M. DeCant shall be allowed two hundred eight (208) hours' pay at his straight time rate and seventy-two (72) hours' pay at his time and one-half rate, Ballast Regulator Operator F. Hammac shall be allowed one hundred ninety-two (192) hours' pay at his straight time rate and sixty-five and one-half (65.5) hours' pay at his time and one-half rate, Trackman O. Rose shall be allowed two hundred eight (208) hours' pay at his straight time rate and twenty-seven (27) hours' pay at his time and one-half rate and Trackman J. Watson shall be allowed ninety-six (96) hours' pay at his straight time rate and fourteen (14) hours' pay at his time and one-half rate."

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.

The Carrier is comprised of the Grand Trunk (GTW), the former Detroit, Toledo and Ironton (DTI) and the former Detroit and Toledo Shore Line (DTSL). While a single corporate entity, many crafts continue to work under the Agreements from the former roads. The Organization represents employees working under the three

Agreements from the former roads. This series of disputes arose after the Carrier assigned former GTW employees to perform work on former DTSL property.

Rule 52(m) provides:

“(m) Although it is not the intention of the company to contract construction or maintenance work when company forces and equipment are adequate and available, it is recognized that, under certain circumstances, contracting of such work may be necessary. When such circumstances arise the Chief Engineer and the General Chairman will confer and reach an understanding setting forth the conditions under which the work will be carried out, giving consideration to performance by contract of grading, drainage, and bridge and structural work of magnitude or requiring special skills not possessed by the employees or the use of special equipment not owned by or available to the company, and to performance by company forces of track work and other structures work.

The company will contract for construction and maintenance work for which company forces and equipment are neither adequate nor available, but shall in each instance give the General Chairman advance notice of the specific work to be thus performed, and on request will confer with the General Chairman in respect thereto.”

The Board has had to pass upon similar disputes before and has denied those claims. See Third Division Awards 30914, 29723 and 29685.

Even viewing this a contracting dispute, notice was given to the Organization under Rule 52(m) and meetings were held. The record supports the Carrier's position that the employees and equipment on the DTSL were not adequate and available to perform the work. Under Rule 52(m), GTW employees could be used to perform the work. Under authority of the above cited Awards, this claim shall be denied.

AWARD

Claim denied.

Form 1
Page 6

Award No. 32912
Docket No. MW-31807
98-3-94-3-73

ORDER

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 23rd day of November 1998.