

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35435
Docket No. MW-33105
01-3-96-3-291**

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned Messrs. B. C. Williams, R. Sheridan and J. D’Orazio to perform district mechanic duties (concrete work) at Conway Yard, Conway, Pennsylvania on October 31, 1994, instead of assigning District B&B Mechanics R. Eshenbaugh, R. H. Stevens and G. Pachuta to perform said work (System Docket MW-3765).**
- (2) As a consequence of the aforesaid violation, District B&B Mechanics R. Eshenbaugh, R. H. Stevens and G. Pachuta shall each be allowed nine and one-half (9.5) hours’ pay per day at their respective time and one-half rates beginning October 31, 1994 and continuing until the violation ceased and they shall each receive credit for benefit and vacation purposes.”**

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.

Distilled to its essence, the claim alleges that furloughed members of a District B&B gang had jurisdiction over concrete work performed by members of a Zone B&B gang at Conway Yard. In analyzing the record, we have disregarded, as we must, all new information and argument contained in the submissions that was not advanced on the property.

There is no dispute that the parties' 1992 Agreement provided for the establishment of zonal gangs that could work across seniority district boundaries. The Organization asserted, however, in its January 27, 1995 appeal that the Zone Gang Agreement was violated by the Carrier. The Carrier, in contrast, took the position that nothing in the Zone Gang Agreement restricted it from assigning the work as it did. In addition, the Carrier noted that the members of the zone gang that did the work actually possessed district seniority. Moreover, it asserted that Rule 19 and the fourth paragraph of the Scope Rule permitted the work assignment. The Organization did not respond to these assertions on the property.

Review of the record discloses that the Organization did not support its position by citing any restrictive language in the Zone Gang Agreement. Instead, it relied heavily upon the fact that the district gang had performed similar concrete work in Conway Yard in 1993-94, which was after the Zone Gang Agreement had been developed. In addition, it referenced the seniority provisions of Rule 4 and the vacancy filling provisions of Rule 3.

In the absence of explicit restrictions on the use of zone B&B gangs, there is no proper basis for finding the Carrier in violation of the Agreement. If the zone gang was not explicitly restricted from performing the work, then there were no actual vacancies to be bulletined pursuant to Rule 3. Moreover, the Organization's failure to refute the assertions regarding Rule 19 and the fourth paragraph of the Scope Rule requires us to treat the assertions as proven facts. As such, they constitute actual Agreement support for the Carrier's work assignment notwithstanding the past performance of similar work by the district gang.

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AWARD

Claim denied.

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 26th day of April, 2001.