

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 35964  
Docket No. MW-33334  
02-3-96-3-841**

**The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.**

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

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- (1) The Agreement was violated when, pursuant to Bulletin Number 279 dated March 13, 1995, the Carrier improperly established a single Retirement Gang as an Indianapolis Production Zone 5 Gang to work over the Southwest and Columbus Seniority Districts which resulted in Columbus Seniority District employees working on the Southwest Seniority District and Southwest Seniority District employees working on the Columbus Seniority District (System Docket MW-3969).**
- (2) As a consequence of the violation referred to in Part (1) above, the following remedies shall apply beginning March 27, 1995 and continuing until the violation is corrected:**
  - (a) For each day that Columbus Seniority District employees assigned to the Retirement Gang work on the Southwest Seniority District, an equivalent number of the senior furloughed Southwest Seniority District employees holding seniority in the same classes (or in the event there are no furloughed employees in the class, simply the senior Southwest Seniority District employees in the respective classes) shall be compensated at the applicable straight time and overtime rates of the class for all work performed by the Columbus Seniority District employees.**

- (b) For each day that Southwest Seniority District employees assigned to the Retirement Gang work on the Columbus Seniority District, an equivalent number of the senior furloughed Columbus Seniority District employees holding seniority in the same classes (or in the event there are no furloughed employees in the class, simply the senior Columbus Seniority District employees in the respective classes) shall be compensated at the applicable straight time and overtime rates of the class for all work performed by the Southwest Seniority District employees.”

**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 terms of Article X of the July 28, 1992 Agreement establish a process by which the Carrier may create and operate “Production Units” across traditional seniority district lines set forth in the Schedule Agreement, within any one of six “Production Zones” on the Conrail System. The extremely voluminous and convoluted record in this case presents a claim by the Organization that the Carrier’s creation of the “Indianapolis Zone 5 Production Gang” by bulletin No. 279, dated March 13, 1995, was void and ineffective because it did not constitute a “production gang,” within the mutually intended meaning of that term in Article X. The claim seeks compensation earned by unnamed individuals in the Southwest and Columbus Seniority Districts for working across each other’s respective seniority district lines as members of the Indianapolis Production Zone 5 Gang. (On this Carrier, Zone 5 comprises the

Southwest Seniority District and the Columbus Seniority District, the rail retirement work to which the Indianapolis Zone 5 Production Gang was performed 60/40% on the Divisions and apparently only one of the eight individuals eventually assigned to that particular Zone 5 gang when the bidding concluded was a Columbus Seniority District employee).

According to the Organization, the Carrier violated Rules 3, 4 and Appendix C of the Schedule Agreement because "employees from other than the Columbus Seniority District crossed from their seniority districts into the Southwest Seniority District to perform routine track maintenance work that was contractually reserved to the Claimants with seniority established in the Columbus Seniority District and vice-versa." The central tenet of the Organization's claim is that the Carrier's creation of the Indianapolis Production Zone 5 Gang was void ab initio, because its size and function made it fall outside the ambit of the mutually intended contractual definition of "production units," as that quoted term is used in the following language of Article X of the July 28, 1992 Agreement:

**"ARTICLE X PRODUCTION UNITS**

**Section 1 Regional Production Units**

- (a) The work territory for all rail and undercutting units shall be divided into two (2) Regional zones as follows:
  - (1) Eastern Zone (All territory encompassed within the Philadelphia, Harrisburg and Albany operating divisions as of the effective date of this Agreement.)
  - (2) Western Zone (All territory encompassed within the Pittsburgh, Indianapolis and Dearborn operating divisions as of the effective date of this Agreement.)
- (b) Employees assigned to positions in Regional Production Units will be furnished meals and lodging by the company and will be allowed a travel allowance of:

- (1) \$14.00 for each weekend trip from their homes to the camp cars, including the initial trip in establishing the Regional Production Unit.**
- (2) \$14.00 for each weekend trip from the camp cars to their homes, including the final trip after termination of the Regional Production Unit.**

**Section 2 - All Other Production Units**

- (a) The work territory for all other Production Units, including heavy bridge gangs, shall be divided into six (6) zones as follows:**
  - (1) Albany Zone (All territory encompassed within the Albany operating division as of the effective date of this Agreement.)**
  - (2) Philadelphia Zone (All territory encompassed within the Philadelphia operating division as of the effective date of this Agreement.)**
  - (3) Harrisburg Zone (All territory encompassed within the Harrisburg operating division as of the effective date of this Agreement.)**
  - (4) Pittsburgh Zone (All territory encompassed within the Pittsburgh operating division as of the effective date of this Agreement.)**
  - (5) Indianapolis Zone (All territory encompassed within the Indianapolis operating division as of the effective date of this Agreement.)**
  - (6) Dearborn Zone (All territory encompassed within the Dearborn operating division as of the effective date of this Agreement.)**

- (b) Employees assigned to positions in Production Units covered in paragraph (a) of this section will be furnished meals and lodging by the Company, and will be allowed a travel allowance of:**
  - (1) \$12.00 for each weekend trip from their homes to the camp cars, including the initial trip in establishing the Production Unit.**
  - (2) \$12.00 for each weekend trip from the camp cars to their homes, including the final trip after termination of the Production Unit.**

**Section 3 - Advertisement of Production Units**

- (a) The initial advertisement of any Production Unit will show the territory over which it is expected that the unit will work. This description will be based on the pre-planned work schedule; however, it is understood that this planned work schedule may change as the work season progresses.**
- (b) A Production Unit whose work during a production season will be confined to a single seniority district shall be advertised first to employees with seniority in that district."**

**The term "production gang" is not expressly defined in either Article X of the July 28, 1992 Conrail/BMWE Agreement (which grew out of the recommendations of PEB 221) or Section 11 of the NRLC/BMWE Imposed Agreement of April 17, 1991 (which grew out of the recommendations of PEB 219). Under the latter Agreement, the definitional gap has been largely filled in by arbitral gloss laid down in decisions by the Contract Interpretation Committee and by a series of interlocking and generally consistent Section 11 arbitration Awards. We have not been informed of any corresponding arbitral proceedings for that specific purpose under Article X of the Conrail/BMWE Agreement. Extensive dicta in Third Division Award 34141 cites with approval three of those arbitral decisions defining the term "regional and system-wide production gangs" under Section 11 of the NRLC/BMWE Imposed Agreement of April 17, 1991 in deciding a claim alleging violations of Article X of the Conrail/BMWE**

Agreement. At bottom line, however, Award 34141 equivocates on the question of definitional gap-filling and turns the decision instead on burden of proof, as follows:

**“The Board does not define production gangs by the sheer number of employees and/or machinery assigned thereto, but with the Carrier not responding to the Organization's arguments, the Board has no choice but to sustain the claim as presented. Any monetary award, however, is based solely upon the hours each gang worked on the Pittsburgh Seniority District wherein each Claimant retains his seniority.”**

We find no reason to disagree with the dicta in Award 34141 concerning the efficacy and consistency of using the carefully reasoned definitions of “production gangs” in the Section 11 arbitration decisions cited therein. But the sine qua non for importing into the interpretation and application of Article X of the Conrail/BMWE Agreement of July 28, 1992 definitions set forth in arbitral gloss emanating from Section 11 of the NRLC/BMWE Imposed Agreement of April 17, 1991, which arose out of PEB 219, is a persuasive showing that such was the mutual intent of PEB 221 and/or the Parties to the latter Agreement. An interpretive leap of such magnitude cannot be made solely on the basis of intuition or appeals to logic, consistency or administrative convenience. The contract under consideration is silent regarding the definition of “production gangs.” Likewise, the evidentiary record in the present case simply is insufficient to support a conclusion concerning mutual intent. The instant claim, therefore, must be denied for insufficiency of proof. See Third Division Award 35435.

### **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 8th day of March, 2002.**