

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 36543  
Docket No. MW-36166  
03-3-00-3-356**

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

**PARTIES TO DISPUTE:** ( **Brotherhood of Maintenance of Way Employes**  
( **Union Pacific Railroad Company**)

**STATEMENT OF CLAIM:**

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

- (1) The Agreement was violated when the Carrier assigned forces assigned to Extra Gang 6082 to perform routine sectionman’s work (deferred and general track maintenance) at the Pocatello Yards in Pocatello, Idaho beginning March 1, 1999 and continuing, instead of assigning said work to Idaho Division, Group 17 Track Subdepartment Sectionmen D. F. LeFevre, P. M. Cantu, T. B. Smith, N. D. Pilster and Idaho Division, Group 28 Sectionman Truck Operator T. J. Wheeler (System File J-9913-52/1187969).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants D. F. LeFevre, P. M. Cantu, T. B. Smith, N. D. Pilster and T. J. Wheeler shall now be compensated at their respective straight time rates of pay for eight (8) hours per day, five (5) days per week, plus all overtime at their respective time and one-half rates of pay, for all time expended by Extra Gang 6082 in the performance of the aforesaid work beginning March 1, 1999 and continuing.”**

**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 D. F. LeFevre, P. M. Cantu, T. B. Smith and N. D. Pilster established and held seniority on the Idaho Division in the Track Subdepartment as Group 17 Sectionmen. Claimant T. J. Wheeler established and held seniority on the Idaho Division in the Track Subdepartment as a Group 28 Sectionman Truck Driver. During the claim period, the Claimants were furloughed or in the process of returning to work following a period of furlough.

The instant dispute arose when the Carrier allegedly used regularly assigned Extra Gang 6082 employees to perform deferred track maintenance and repairs at the Pocatello Yards in Pocatello, Idaho, instead of using the Claimants. According to the Organization, the work consisted of "installing new ties, gauging, surfacing, lining track and other related track maintenance work customarily and traditionally assigned to Group 17 Sectionmen and Group 28 Truck Drivers on the Idaho Division."

The facts underlying this case are virtually identical to those addressed by the Board in Third Division Award 36542. In that case, the Board found evidence that the disputed work involved renewing ties, and that the Organization failed to provide any specific details regarding the track maintenance or other duties allegedly performed by Extra Gang 6602. Furthermore, the Organization did not prove that tie renewal work was exclusive to extra gangs or section gangs.

The Board makes similar findings here regarding the nature of the work and the issue of exclusivity. Although details regarding the exact work performed in this case are not as clear, both parties mention tie renewal work in their Submissions. As stated innumerable times by many prior Awards, the Organization bears the burden of proving the merits of its case by presenting substantial evidence in support of its position. Moreover, many Third Division Awards have held that in cases such as this, where the employees of one group or subdepartment within a craft assert a superior right to that

work over employees of another group or subdepartment within the same craft, that the Organization is faced with an even weightier burden. The Board agrees.

Regarding the question of whether the Claimants were entitled to the disputed work, as the Board stated in Award 36542, the Organization did not prove here that on the claim dates Extra Gang 6082 performed any work that was exclusive to Sectionmen or Truck Drivers. Therefore, based on the Board's reasoning in Award 36542, the instant claim must be denied. See similar Awards 11 and 12 of Public Law Board No. 6302 involving these same parties and factual situation.

**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 May 2003.**