

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37092
Docket No. MS-37932
04-3-03-3-261

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

(Herb G. Zaricor, et al
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company (former Missouri
(Pacific Railroad)

STATEMENT OF CLAIM:

"This is to serve notice, as required by the Uniform Rules of procedure of the National Railroad Adjustment Board effective May 16, 1994, of my intention to file an Ex Parte Submission within 75 days covering an unadjusted dispute between myself, Mr.'s W. J. Randol, M. J. Cushman, J. A. Forth, R. L. Stearns, T. B. Brown, and the Union Pacific Railroad Company, involving the following:

1. Ten (10) hours each at straight time rate for respective rates of pay for the days of January 7, 8, 9, 10, 14, 15, 16, 17, 21, 22, 23, 24, 28, 29, 30, and 31, 2002 (16 days X 10 hours each day = 160 hours each), and for all maintenance work System Bridge gang 9300 on Bridge 154.52 on the Hoxie Subdivision near Fisk, Missouri. In addition, \$48.00 per diem for each claimant, for each calendar day of the claim period (25 days X \$48.00 per day = \$1,200.00 for each claimant).
2. Reimbursement from the Union Pacific Railroad Company for any and all expenses incurred while pursuing this claim (not limited to, but including travel, lodgings, etc.).
3. That the Union Pacific Railroad Company, ceases and desists from such practices."

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.

Claimant H. G. Zaricor submitted a claim for work performed by Bridge Gang 9300 on dates mentioned in the Statement of Claim. The claim was filed in behalf of himself – H. G. Zaricor, Bridge Foreman; W. J. Bathon, Bridge Foreman; D. M. Randol, Assistant Bridge Foreman; M. J. Cushman, Assistant Bridge Foreman; J. A. Forth, Bridge Mechanic; R. L. Stearns, Bridge Mechanic; and T. B. Brown, Bridge & Building Helper. All Claimants retain seniority on Seniority Division No. 1, Roster 5300.

Claimants Zaricor, Randol, and Brown were assigned to Division B&B Gang 1226 with hours of 7:00 A.M. to 5:00 P.M. Monday through Thursday, headquartered at Poplar Bluff, Missouri. Claimants Bathon, Cushman, Forth, and Stearns were assigned to Division B&B Gang 1227 with hours of 7:00 A.M. to 5:00 P.M. Monday through Thursday, headquartered at Steelville, Illinois.

Claimant Zaricor, et al, argued that on the dates mentioned in the claim, System Bridge Gang 9300 performed maintenance work on Bridge 154.52 on the Hoxie Subdivision; such work included replacing crossties and installing a walkway on bridge. The Claimants take the position that duties of System Bridge Gangs are restricted to new construction, and System Bridge Gangs are prohibited – by custom and tradition - from performing maintenance except on steel bridges or in cases of emergency. All work performed by System Bridge Gang 9300 on the claim dates, assert the Claimants, was maintenance, non emergency in nature and was

performed on territory that falls within the boundaries of Seniority Division No. 1; and for those reasons, the Carrier violated both Scope as well as Seniority Rules.

The Carrier contends that the nature of the work in dispute was not maintenance, but was, in fact, a capital project, and that System Bridge Gang 9300 completely replaced a bridge deck and constructed new walkways (foot walks and handrails) on Bridge 154.52 near Fisk, Missouri, in January 2002.

The Carrier further maintains that such work, whether new construction or maintenance is not now nor was it ever performed exclusively by a single seniority group either Division or System Gangs. The Carrier acknowledges that although there were occasions on which Division Gangs performed what Claimant Zaricor described as maintenance work, such assignments were made on the basis of efficiency and convenience and were not required by the Agreement. The Carrier points out that both categories of employees are often assigned to the same project and both work side by side doing the same work. Indeed, the Carrier emphasizes the Agreement provides for the movement of employees between seniority rosters, and allows one seniority district to perform work of the other.

We studied and carefully evaluated the positions staked out by both parties. In reading the Scope Rule, we were unable to identify any language that conferred exclusivity of work on one seniority district or the other. Having examined the language, we found that any distinction between seniority rosters, regarding the type of work performed, would have disappeared with the System Bridge Gang Agreement negotiated and signed in 1991. That Agreement provided for consolidation of several districts into two large districts and allowed newly hired employees on System Gangs to establish seniority on Divisions. Employees were able to move between seniority rosters and perform work that may previously have been associated with a single seniority district.

Given the Carrier's assertion that it made no differentiation in work assignments between System and Division Gangs, except for reasons of efficiency and convenience, together with evidence of record in the form of the System Bridge Gang Agreement negotiated and signed in 1991 and endowing right of movement between seniority rosters, with such movement being practiced for more than a decade and a lack of showing by the Claimants of exclusive rights to perform the

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work in question, the conclusion that forces itself upon us is that the Claimants have not met their burden of proof.

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 21st day of July 2004.