

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37416
Docket No. MW-36960
05-3-01-3-597

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(CSX Transportation, Inc.

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it abolished and converted Section Gang 5KD1 from a St. Louis seniority district basic force section gang to a Midwest service lane gang on November 13, 2000 [System File I52706300/12(01-0092) CSX].**
- (2) The Carrier violated the Agreement when it abolished and converted Section Gang 5K41 from a C&EI seniority district basic force section gang to a Midwest service lane gang on November 13, 2000 [System File I63706400/12(01-0093)].**
- (3) The claim referenced in Part (1) above, as presented by Vice Chairman F. N. Simpson on December 5, 2000 to K. L. Johnson, Jr., shall be allowed as presented because the claim was not disallowed in accordance with Rule 24(a).**
- (4) The claim referenced in Part (2) above, as presented by Vice Chairman F. N. Simpson on December 5, 2000 to K. L. Johnson, Jr., shall be allowed as presented because the claim was not disallowed in accordance with Rule 24(a).**

- (5) As a consequence of the violation referred to in Parts (1) and/or (3) Gang ' . . . 5KD1 should be converted back to a St. Louis seniority district basic force gang that will only work on the St. Louis seniority district. Claimants named and unnamed should be paid any loss of wages and benefits as direct result of this violation. Unnamed Claimants will be ascertained after the exercise of seniority by all concerned is over. It is apparent that some St. Louis seniority district employees will be furloughed as a direct result of this action.'
- (6) As a consequence of the violation referred to in Parts (2) and/or (4) Gang ' . . . 5K41 should be converted back to a C&EI seniority district basic force gang that will only work on the C&EI seniority district. Claimants named and unnamed should be paid any loss of wages and benefits as direct result of this violation. Unnamed Claimants will be ascertained after the exercise of seniority by all concerned is over. It is apparent that some C&EI seniority district employees will be furloughed as a direct result of this action.'"

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.

On November 6, 2000, the two service lane work territory ("SLWT") gangs were advertised for bid becoming effective November 13, 2000. That action resulted in the abolishment of two basic force gangs, also effective November 13, 2000. These claims followed.

First, the Organization's procedural argument is without merit.

Second, with respect to the merits, Appendix U, Section 4.a. provides:

"Twelve (12) new 'Service Lane Work Territories' ('SLWTs') are hereby established for 'floating; i.e. other than point headquartered' Track and Bridge and Facility positions falling into the category between System Production Gang work and basic point headquartered maintenance work; e.g., an AFE gang that would perform work over multiple seniority districts. Such gangs consisting of any number of employees may perform any work covered by the scope of the new Maintenance of Way Agreement and may be established effective on 'split date'. It is recognized that as these gangs are established a corresponding number of positions in floating district or other similar type gangs may be abolished. It is also understood that the establishment of SLWT gangs will not diminish the carrier's right to retain or establish seniority district floating gangs where warranted. On the other hand the establishment of SLWT gangs will not be used as a device to eliminate basic maintenance forces (See Side Letter). A copy of a map and a listing of seniority districts contemplated in each SLWT are attached (Attachments 'E' and 'F'). Employees holding seniority on a seniority district that is split between more than one SLWT will only be obligated for protective benefit eligibility, including but not limited to SUB, to protect SLWT work on one SLWT, whichever is nearest in proximity to the employee's place of residence."

Side Letter No. 2 provides:

“This refers to our commitment not to use the establishment of SLWT gangs as a device to eliminate basic maintenance forces.

It was further agreed that with the establishment of SLWT gangs, not less than forty per cent (40%) of all BMWE-represented positions on the expanded CSXT System (not including System Production Gang positions or the former Clinchfield Railroad) will have fixed headquarters. The percentage of fixed headquartered positions will be determined on a system-wide basis, using a rolling monthly average comparison of both the total number of BMWE-represented positions (less SPG positions) and the number of fixed headquartered positions. The percentages will be reported to the General Chairman on a quarterly basis.”

There is no evidence in this record to support the Organization's position that the establishment of the SLWT gangs in dispute and the corresponding abolishment of the basic force gangs were outside the Carrier's authority agreed to in Appendix U, Section 4.a. More specifically, there is no evidence to show that the Carrier's actions exceeded the parameters specified in Side Letter No. 2. Without more, this claim must be denied.

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 22nd day of March, 2005.