

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 38087
Docket No. MW-37200
07-3-02-3-75

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Union Pacific Railroad Company (former Chicago &
(North Western Transportation Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it assigned System Gang employes to dismantle track referred to as the Q Extension between Mile Posts 110.2 and 110.6 on the north side of the main lines in Sterling, Illinois on October 17, 18 and 19, 2000, instead of Seniority District T-3 employes D. L. Rogers, G. F. Norway, R. L. Pillars, K. R. Spooner, H. R. Johnson and M. J. Clevenger (System File 3KB-6674T/1254818 CNW).
- (2) As a consequence of the violation referred to in Part (1) above, Claimants D. L. Rogers, G. F. Norway, R. L. Pillars, K. R. Spooner, H. R. Johnson and M. J. Clevenger shall now each be compensated for an equal proportionate share of the one hundred seventy (170) man-hours expended by System Gang 9033 in dismantling the Q Extension.”

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 basic facts of this jurisdiction of work controversy are not in dispute. The parties have an Implementing Agreement that provided for the use of system gangs to perform scope work across the territories of the various railroads that were merged or consolidated into the present Carrier. Effective June 1, 1998, the territory and employees of the C&NW were added to and made a part of the system gang operations. Section 1 of the Implementing Agreement listed titles for nine different kinds of system gangs. However, the document did not provide a detailed description of the specific work that each gang could or could not perform.

On the dates of the claim, the Carrier used System Gang 9033 to dismantle track known as the "Q Extension" that was located between Mileposts 110.2 and 110.6 on the north side of the main lines at Sterling, Illinois. The dismantling work was part of an overall work order that also involved construction of a control point near Galt, Illinois, as well as the construction of some main line crossovers known as "Gate City." According to the record, however, it appears that the retiring of the Q Extension was neither incidental to nor necessary for the accomplishment of the other portions of the work order.

In very brief summary of their positions, the Organization contends that the Implementing Agreement "... outlines the type of work to be performed by System Gangs ..." and track dismantling or tear out is not covered as system work. The Organization maintains that local section forces were entitled to perform the dismantling work and were deprived of a work opportunity as a result of the Carrier's use of System Gang 9033. In its view, the Carrier's actions were tantamount to an improper contracting of work.

The Carrier, on the contrary, contends that system gangs are not restricted from performing dismantling work and, further, that such work is not exclusively reserved to local forces. The Carrier also noted that the Claimants were fully employed during the claim period. In addition, the Carrier asserted that System Gang 9033 did not work any overtime while dismantling the Q Extension.

Our review of the record shows that the Organization's claim was founded upon assertions about the scope of permissible system gang work. These assertions were effectively refuted by the Carrier. With the jurisdiction of work issue thus joined, it was incumbent upon the Organization to provide probative evidence in support of the allegations of the claim. The record is devoid of such evidence. No citations to language of the Implementing Agreement were referenced that explicitly limited the scope of work that can be performed by the nine types of system gangs. Moreover, the record contains the statement of a Carrier official who had some 30 years of knowledge about the use of system gangs. The statement effectively undermined the Organization's position.

In disputes of this kind, the Organization bears a heavier burden of proof to demonstrate the merits of its claim when members of the same craft raise work jurisdiction questions. On the record before the Board, we find that the Organization has not satisfied its burden of proof. Accordingly, we find that the Agreement was not violated.

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 February 2007.