

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Arthur M. Millard, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP
CLERKS, FREIGHT HANDLERS, EXPRESS
AND STATION EMPLOYES**

THE WESTERN PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: "Claim of employes that laborers now performing work at Oakland Store and Roundhouse performed prior to December 15, 1930, by 'Bull Gang' be paid at the rate of 52c per hour; that position of Foreman and Check Clerk be paid at the rate of 62½c per hour; that each employe displaced through the action of the Company in abolishing the 'Bull Gang' positions (causing the employes to exercise displacement rights) be paid the difference between what he earned and what he would have earned had the Company not abolished the 'Bull Gang'; and that all positions in dispute be returned to the scope of the Clerk's Agreement."

STATEMENT OF FACTS: In their ex parte submission the employes stated the facts as follows:

For many years prior to December 15, 1930, the carrier maintained established positions at Oakland Store and Roundhouse known and designated as "Bull Gang," the rate of pay for these employes being the same as that paid freight handlers. The rate for freight handlers was applied on each successive wage change from the date of Supplement No. 7 to General Order No. 27 in 1918 to and inclusive of U. S. Railroad Labor Board Decision No. 1986 in 1923. In 1927, by agreement between the parties, the employes were given the same rate of increase in pay as was given freight handlers, establishing the hourly rate of 52c per hour, with the further understanding that when any of these employes were assigned as check clerks or to other higher rated positions, they would receive the higher rate, as provided for in Rule 10 of the Clerks' Agreement.

The duties of these employes consisted of: checking, unloading and storing carload shipments of car wheels (all old wheels, on axle, are shipped into Oakland Store and are repaired by the roundhouse machinists, the wheels being loaded and unloaded by the Bull Gang, stored, and later selected and taken to the wheel press or lathe, as needed by the shopmen); unloading, tallying, and piling of lumber (for use of carmen); unloading and loading all motor car shipments (motor cars are overhauled at Oakland); receiving and delivery of machinery and machinery parts for tugs and other floating equipment which is furnished or repaired at Oakland Shops.

Effective December 15, 1930, the Bull Gang was nominally abolished, and instructions were issued by the carrier whereby the mechanical department would hire additional shop laborers at 38¢ per hour and turn them over to the Store Department to do the work formerly performed by the employes

Department at Oakland to justify the employment of store laborers exclusively, as the extra laborer requirements were for several men a portion of the time. The remainder of the time of these men was occupied in doing work for the Mechanical Department at a rate higher than paid regular employes in that department performing similar work and working in the same area. Eighty percent of the time of the Mechanical Department laborers at Oakland is engaged in the regular work and only 20 percent in performing work for the Store Department. It would not be feasible to employ regular store laborers to handle it as they ordinarily require four or more laborers at a time and there is not sufficient work for this number.

"Only one man who was working on the Bull Gang is still in service and he is working in the Tie Gang at the Mole at the rate of 52¢ per hour, which is the same he would have received in the Bull Gang."

OPINION OF BOARD: This claim is based on the abolishing by the Carrier, on December 15, 1930, of a group of labor positions known as the "Bull Gang," and who previous to December 15, 1930, had for a long time been assigned by the Agent of the Carrier at Oakland, Calif., from what was known as the W. P. Mole to the Oakland Store and Roundhouse. Claim is for the restoration of the positions to the scope of the Clerks' Agreement and that each member of the gang displaced be paid the difference between what he earned and what he would have earned at 52¢ per hour, had the Carrier not abolished the gang; and that the position of Foreman and Check Clerk of the Gang be paid in the same manner but at a rate of 62½¢ per hour.

In support of their contentions the employes submit various rules of the agreement between the parties effective October 1, 1930.

From the evidence submitted in this claim the laborers known as the "Bull Gang" were a group of men employed in connection with the work of the Mole under the jurisdiction of the agent of the Carrier at Oakland and who, in accordance with various agreements and decisions, were paid at a rate of fifty-two cents per hour for laborers and, when assigned as Check Clerks or to other higher rated positions, were to receive the higher rate provided in Rule 10 of the Clerks' Agreement.

In considering this claim in its connection with rules of the agreement, the facts are evidenced that the practice of furnishing men from the Mole to the Store and Mechanical Departments began in the making of temporary assignments, doubtless for the handling of a class of work with which the men of the Mole were familiar, and, at the time such assignments were made, one of the men sent with gang was undoubtedly designated as the leader or supervisor of the others. Originally these men were returned to the Mole on completion of the work to which they had been assigned, and in accordance with the established rules, were paid at the rate applicable to laborers at the Mole instead of the lower rate applicable to laborers of the Store and Mechanical Departments.

As time went on and the requirements of the Store and Mechanical Departments increased, the work of the so-called "Bull Gang" with these departments became a regular practice instead of an intermittent service, although the men were still retained as employes of the Mole and at the rate of pay established for laborers at that station, until the positions were abolished on December 15, 1930, by the Carrier, and the work formerly assigned to employes of the Mole was taken over by the Store and Mechanical Departments.

In their submission in this case the employes call attention to Awards 385, 386 and 485 of this Third Division of the National Railroad Adjustment Board. The Board submits, however, that these awards were issued supporting claims for work which still continued to exist, being taken out of or removed from one department and class of employes and assigned to a dif-

ferent department and another class of employes, without being made a matter of negotiation and agreement between the parties.

In the case covered by this instant claim there was no work taken out of the Mole, or department that was under the jurisdiction of the agent at Oakland, and assigned to a different class of employes in a different department, on the contrary, the men from the Mole were assigned from that station or district to another, or to the Store and Mechanical Departments, where they performed work undoubtedly similar to that performed by laborers at the Mole, but work which definitely belonged to the Store and Mechanical Departments, and for which these assigned employes received the rate of pay applicable to the Mole instead of the lower rate applicable to employes of the Store and Mechanical Departments.

In the gradual transfer of these men of the "Bull Gang" from an intermittent to a regular service in the Store and Mechanical Department, and inasmuch as the work at the Mole continued to exist, there is little question but that, while these members of the Bull Gang were absent from their regular work at the Mole on intermittent service, their places were filled by employes from the extra list who were in turn displaced in accordance with the seniority rules by the return of the employes who had been temporarily assigned to other departments or districts.

Later, when this intermittent service became a regular one, the places of the members of the Bull Gang at the Mole had undoubtedly been filled with replacements and when the Carrier abolished the "Bull Gang," or employment of men assigned from the Mole and assigned the work in the Store and Mechanical Departments to laborers operating under the rules, rates or agreements of those departments, those employes, who, previous to December 15, 1930, had been identified with the Mole gang by assignment, rates of pay and seniority, were entitled to exercise such seniority rights as they possessed in regaining their former employment at the Mole.

Under these conditions and the facts in evidence, the Board finds no violation of the existing agreement between the parties and no reason for disturbing the action of the Carrier.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon and upon the whole record and all the evidence, finds and holds:

That the carrier and the employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Board finds no reason for disturbing the action of the carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 15th day of December, 1937.