Award No. 6953
Docket No. MW-6915

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

A. Langley Coffey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CHICAGO GREAT WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood, that:

(1) The Carrier violated the effective Agreement on October 31, 1952; November 3 and 4, 1952; and on January 8, 9, 12, 13, and 14, 1953, when it assigned extra gang employes to perform the usual and customary work of regular section gangs on Section "B" at East Yard, Minneapolis;

(2) All extra gang laborers in Extra Gang No. 4 be paid the difference in what they did receive at their extra gang laborer's straight time rate of pay and what they should have received at the section laborer's straight time rate of pay while so engaged in the work and on the dates referred to above;

(3) Section laborers and section foreman assigned to Section "B", East Yard, Minneapolis, on the dates referred to in Part (1) of this claim be allowed pay at their respective straight time rates for an equal proportionate share of the total man-hours consumed by the extra gang employes in performing the work referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: On October 31, November 3 and 4, 1952, extra gang laborers assigned to Extra Gang No. 4 in charge of Extra Gang Foreman M. C. Hildebrandt were assigned to perform work on Section "B", East Yard, Minneapolis which, by tradition and custom, has been recognized as work of regular section forces. The work consisted of policing the right-of-way, building grounds, material piles, and so forth, for the purpose of improving the appearance of the right-of-way in anticipation of a forthcoming inspection by Carrier officials. Essentially, the work consisted of cleaning debris, weeds, etc., from in and around tracks, material piles, buildings, etc.

On January 8, 9, 12, 13 and 14, 1953, the same extra gang was assigned to perform other work on the same section which was similarly recognized as section laborers' work by custom and tradition, consisting of regular track maintenance work such as gauging and spike lining of tracks; tightening bolts; and replacing broken angle bars.

of this kind that the Carrier preserved Rule 26(g) even when the rule was revised to provide for elimination of pro rata rate for the ninth and tenth hour of work.

As previously stated the current agreement contains no limitation with respect to work performed by extra gang laborers at the straight time rate. If it were intended that extra gang laborers were to be precluded from performing certain work the agreement would have so stated. In fact, if it had been the intent of the parties to limit or define the duties of extra gang laborers it would have been an easy matter to include appropriate language in the Agreement, which was not done.

There has been no change in the governing agreement with respect to division of straight time work as between extra gang and section gang laborers and heretofore there has been no complaint notwithstanding the fact that there has been no change in the established practice of commingling extra gangs and section gangs as was done on the eight days involved in this dispute. Acquiescence on the part of the Employes in the past is due to the fact that in the performance of track work it is not possible to draw a distinct line between work that belongs to extra gangs and work that belongs to section gangs. When track work is broken down into its component parts such as pulling and driving spikes, applying and tamping ties, applying and tightening bolts, etc., it becomes increasingly clear that both section gangs and extra gangs commonly engage in such work. The awards of this Division support the principle that it is a universal practice for extra gangs and section gangs to participate in such track work; most of disputes before this Division have been occasioned by Carriers using extra gang laborers to perform overtime work in preference to, or in the place of, section gang laborers. However, that issue is not involved in this dispute inasmuch as all members of Section Gang "B" as well as members of Extra Gang No. 4 participated in this straight time work on the eight days mentioned in the instant case.

The record shows that on October 31, November 3 and 4, 1952, extra gang and section gang engaged in the following work: Pick up and dispose of surplus ties and material used in connection with project, assembling and burning of discarded ties and other material, leveling off ballast and filling in around switches, spreading and leveling crushed rock surfacing on driveways and around buildings and similar work incidental to completion of project. On January 8, 9, 12, 13 and 14, 1953, these same forces performed track work on existing tracks to get them in shape for winter season and on partially rehabilitated tracks to protect same until such time as the job could be completed.

In the prosecution of this case, it is quite evident that the Employes are endeavoring to place a violent interpretation upon the contractual agreement by taking a phrase from the Overtime Rule and giving it a meaning not intended by the parties, not implied by a logical construction of language, nor substantiated by the practice under the rule. The Carrier has shown the background leading up to the present Overtime Rule—has shown that the governing agreement contains no limitations with respect to straight time work performed by extra gang laborers and that claim is not supported by the rules in effect on the property. In view of the foregoing claim should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: In October 31, November 3 and 4, 1952, extra gang laborers assigned to Extra Gang No. 4 in charge of Extra Gang Foreman W. C. Hildebrandt were assigned to perform work on Section "B," East Yard, Minneapolis, consisting of cleaning debris, weeds, etc., from in and around tracks, material piles, buildings, etc.

On January 8, 9, 12, 13 and 14, 1953, the same extra gang was assigned to perform other work on the same section such as gauging and spike lining of track; tightening bolts; and replacing broken angle bars.

Section laborers and section foreman assigned to Section "B", East Yard, Minneapolis, lay claim to the work as being that which, by tradition and custom, has been recognized as work of regular section forces.

Accordingly, we have a dispute over the Carrier's right to have its work done by different classes of employes of the same craft, each class being included in Group 1, Track Department, and both being under the same contract.

There is no question that Extra Gang No. 4 was properly assigned on Section "B" in connection with an extensive program of rebuilding and rehabilitating Carrier's yard at East Minneapolis. It had been on the property at this location since July 1, 1952, and both the extra gang and Section Gang "B" had been engaged in performing work within the confines of East Minneapolis Yards since that time. There is no dispute between the parties except for the eight days covered by the claim. All the eight dates were within the normal work week amounting to straight time work and on these dates the section force was used and compensated at the regular section laborer's rate of pay.

The Employes contend that Extra Gang No. 4, a lower wage rated class of employes, performed the work of a higher wage rated classification, and that those persons who actually did the work are entitled to be compensated at the difference between the lower wage rate of their class and that for Section Gang "B"; also, that Section Gang "B" should be paid additional compensation for the days in question at straight time rates for an equal proportionate share of the man-hours worked by the extra gang.

Carrier's first and major contention is that the rules of Agreement do not support the claim. We agree only that the Agreement governs and a decision must find support in the expressed or clearly implied intent of the parties.

But those who make these Agreements deal only with skeletons and not the full body of working rules, because both know that railroading is steeped in tradition and both expect their language to be read against a background of custom, practice, and usage. When those who should know what the language means can't agree, they expect of the one who is called upon to interpret and construe same, that he will be sufficiently grounded in the rudiments and principles of collective bargaining, that he will be able to see more clearly implied than actually spoken, but being under restraint, nevertheless, not to add to or take anything away from the contract.

We see enough in Rules 2 (a), (b), 4 (a), 26 (g), and 36 to convince us that work under this Agreement is organized, let and paid for on the basis of grade and class of work involved. A difference in rates of pay, seniority and the exercise thereof, to mention two points of distinction, is proof of difference in classification of section and extra gang laborers.

Neither does the fact that the work or duties is not clearly defined in the rules, or the further fact that section and extra gang laborers have been commingled and intermingled in the course of the work of rebuilding and rehabilitating the yard, pose any real difficulty.

Extra gangs, according to accepted railroad practice, are to be used to augment and assist the Carrier's regularly assigned forces, when major projects such as laying new rail, rail changes, ballasting track, new tracks, etc., are undertaken. The extra gang has no claim, however, to regular

maintenance work as such. It is this augmenting character of service, though, which brings about the commingling and intermingling of forces, on which the Carrier in this docket lays great stress.

Rule 36 allows for composite service on payment of the rate applicable to class of work under conditions stated. While it has no application to the intermingling and commingling of which we here speak, it adds to the need for observing classification lines and serves to restrain Carrier in the indiscriminate use of extra gangs to do section laborers' work.

Carrier's assertion in the record, backed by persuasive argument of its Board representative, that in the performance of track work it is not possible to draw a distinct line between work that belongs to extra gangs and work that belongs to section gangs, is the most valid of the many contentions that have been advanced for a denial of claims. Our basis for disagreement is that we are not concerned about work procedures, but about class of work. The test is, was the work in question necessary, essential, and directly related to the project, or was it more in the nature of usual and customary track maintenance?

We find and hold that work of record was the class and character of work normally, usually and customarily performed by section forces in connection with track maintenance. In other words, we have applied the essential and not the "incidental" test, as will more clearly appear from what next is said by us.

We hold it to be a tacit admission on Carrier's part that the project was complete, at least so far as it could go at the time, due to "lack of time and shortage of rail". Also, Carrier's admission that some of the rail work was on "old track" without giving us more help, has been held against the one making the admission to mean that none of the work had to do with laying new rail or rail replacement, but was all in the nature of track maintenance and not a part of the project for rehabilitating the yard. As to the work in question for the October and November dates, we see nothing in connection with cleaning weeds, debris, etc., which would call for the Carrier augmenting its regular forces, nor do we see any reason for keeping the extra gang on Section "B" to do work of cleaning up or putting the project "to bed" for the winter when, so far as we can tell from the record, the same work could have been done by the regular forces without Carrier being put to any great disadvantage.

This, to us, is a case of contract violation and claims (1) and (2) will be sustained.

Claim (3) will be denied. The violation, under facts and circumstances of record, appearing to be one of working employes under the same contract out of classification, rather than a clear invasion of another's work domain, we see no need to look beyond the composite service rule in the Agreement for a remedy. Actual overtime not being involved, and there being nothing of record on which to base a finding that the extra gang was worked in place of regular section gang to avoid overtime, Rule 26 (g) is not applicable to the facts in dispute.

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

The Agreement was violated.

AWARD

Claims (1) and (2) sustained. Claim (3) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 12th day of April, 1955.