

Award No. 10380

Docket No. MW-9715

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

David Dolnick, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY**

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

(1) The Carrier's use of a System B&B gang on the McCook Division to assist in the reconstruction of Bridges 0.86, 0.86A, and 0.86B during a period when it had available a Division B&B gang with the required supervision, experience and personnel to perform all such work was in violation of the effective Agreement.

(2) Division B&B Foreman L. L. Marcellus, Mechanics E. J. Metzger, E. E. Benjamin, R. L. Bible and Helpers G. J. Burkholder and C. H. Beor each be allowed pay at their respective straight time rates for an equal proportionate "share of the total man-hours consumed by the System B&B gang in performing the work referred to in Part (1) of this claim during the period from January 2, 1956 through February 17, 1956.

EMPLOYEES' STATEMENT OF FACTS: In 1949 Bridges Nos. 0.86, 0.86A and 0.86B, spanning the South Platte River on the McCook Division at Denver, Colorado, were partially destroyed by fire. The bridges were repaired by placing helper bents under the damaged steel spans and by adding piles and bearing timbers to the piers.

In 1955, the Carrier decided to reconstruct these bridges and install new steel spans in each of such bridges. The work consisted of the construction of the necessary sub-structures, the installation of the steel spans, the dismantling and removal of the old bridges and other work incidental thereto.

Commencing in April of 1955, the Carrier assigned Division B&B Gang No. 26, assisted by a System B&B Gang, to perform the above referred to work up to and through February 17, 1956, at which time the System B&B Gang was assigned to other work on another Division.

On December 30, 1955, the Carrier abolished Division B&B Gang No. 20, which consisted of a Foreman, four mechanics, and three helpers. As a result of these employees exercising displacement rights, the claimant B&B Foreman,

could not; therefore, possibly be a "division gang that was supplanted by a system gang."

Rule 6 provides that System gangs will work over the system and that the employees of such gangs will not be subject to displacement by Division forces. It also provides that a System gang will not supplant a Division gang that has the qualifications therein stated to perform the work. The rule, however, cannot be construed to mean that no Division gang will ever be laid off while a System gang is on the division, nor can it be construed to mean that all laid off division forces will be recalled to service whenever a System gang moves on to a division. The employees would like to have the rule so construed in order to justify this extortive and wholly unwarranted claim. But what is more important, is that the employees are dissatisfied with Rule 6, because it provides for use of System gangs, and has so provided ever since the first agreement was negotiated between the parties. Petitioner is using this claim, along with other similar claims, as a lever in an attempt to force the Carrier into negotiating Rule 6 out of the Agreement. While Petitioner is progressing this claim before the Board, the employees at the same time have pending before the Carrier a formal notice served under Section 6 of the Railway Labor Act of desire to negotiate rules which will have the effect of abrogating Rule 6 in its entirety, the expressed purpose of which is to eliminate System gangs. But unless and until Petitioner is successful in negotiating Rule 6 out of the Agreement, the rule must still be applied as written—it cannot be abrogated by the filing of claims of this nature.

The provisions of Rule 6(d) are clear. They do not permit division employees to displace system employees under any circumstances. The facts are also clear. They show that claimants, individually, do not possess any of the qualifications required by Rule 6(d). They show that the claimants, collectively, do not and did not constitute a Division gang, because they were not members of Gang No. 20 when it was laid off on December 30, 1955. Collectively, they were completely unqualified to perform the work that was performed by the System gang.

When the provisions of Rule 6 are viewed in the light of the facts in this case, there can be no decision other than denial of the claim in its entirety.

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The Carrier affirmatively asserts that all data submitted herewith has previously been submitted to the Employees.

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(Exhibits not reproduced.)

OPINION OF BOARD: The facts are not in dispute. On April 15, 1955, Division gang 26 started to repair Bridges 0.86, 0.86A and 0.86B. On April 18, 1955, System gang 111 started work on the same bridges. The two gangs worked together continuously thereafter except that the System gang completed their work on March 30, 1956.

On December 30, 1955, while System gang 111 and Division gang 26 were working on bridges 0.86, 0.86A and 0.86B, Division gang 20 was laid off. The Employees in Division gang 20 exercised their seniority and bumped junior Employees in their Division. None of the Claimants were members of Division gang 20 which was laid off, and none were members of Division gang 26 which was working on the bridge with System gang 111. The Organization contends

that the Carrier should have replaced System gang 111 with the Claimants who had Division seniority and could have performed the work done by System gang 111 and they request pay from January 2, 1956 until February 17, 1956, when System gang 111 completed their work.

The first complaint dated January 4, 1956, was made on the property by Clarence H. Bear who was a member of Division gang 20. He said in part:

"I am writing in regards to my job. I was laid off on December 30th and according to Rule 6 section (d) they aren't supposed to lay off the division gang and keep the System gang working on the division. Therefore it looks like we could collect our wages as long as the system gang are working on the division." (R 14)

On January 24, 1956, the Organization wrote the Carrier and said:

"We hold this Division gang should not have been laid off, due to a System Bridge and Building gang being used on the Division." (R 21)

The letter continues to say that foreman L. I. Marcellus had relieved Division gang 26 foreman Keeling for three weeks and that "the rest of the Division men laid off were equally as qualified as the System men".

The Carrier's letter to the General Chairman of the Organization dated May 5, 1956, stated that Division gang 20 up until it was laid off on December 30, 1955, was "engaged in routine maintenance work and was not equipped to carry on any work other than light maintenance of small bridges, buildings, platforms, culverts, etc., and obviously was not equipped with the necessary tools, supervision, experience and personnel to assist in the work" (R 26). This letter further said:

"The work to be performed in the dismantling of these three bridges and erecting the three new steel bridges in their place was a project of considerable magnitude calling for the use of more than 2,000,000 pounds of new steel, 50,500 pounds of steel piling, 1920 feet of wood piling, 49,700 board feet of lumber, 505 cubic yards of concrete and the handling of 287,000 pounds of old steel, more than 7,000 feet of old piling and more than 100,000 board feet of used lumber. The work and supervision required throughout the dismantling and erecting process was so extensive in character that a division gang could not successfully complete the work by itself or with the assistance of another division gang. There being no division gang with the required supervision, experience and personnel available on the division that could perform the work alone or with the assistance of another division gang, it was necessary that a System gang equipped with the required tools and heavy equipment and experienced supervision and personnel be called upon to perform the work to an efficient economical conclusion."

The only answer to the above statement of the Carrier is contained in the Organization's letter of June 29, 1956 which said:

"Mr. Hall has gone very much into detail trying to disqualify the claimants in this case. However, he fails to make note of the fact Foreman Marcellus run both the Division gang and the System gang at different times during the construction of these bridges. Further, the other claimants have worked on jobs similar to this. To discredit

them just because they were not engaged on a project such as the construction of Br's. 0.86, 0.86A and 0.86B at the time they were layed off is being quite unfair and inconsiderate of the their ability." (R 28).

Both parties rely on Rule 6(d) which says:

"Employees assigned to System Bridge and Building gangs will have the right to work over the System and will not be subject to displacement by employees holding Division seniority. A System gang will not be used to supplant a Division gang but may be used to perform work on a seniority district when no Division gang with required supervision experience and personnel is available on the seniority district to perform the work to which such system gang is to be assigned."

The Carrier emphasizes that a System gang "will have the right to work over the system and will not be subject to displacement by employees holding Division seniority". The Organization relies on the latter part of this Rule which says that: "A System gang will not be used to supplant a Division gang but may be used to perform work on a seniority district when no Division gang with the required supervision, experience and personnel is available on the seniority district to perform the work to which such System gang is to be assigned".

Unfortunately the Agreement does not define or distinguish the skills, abilities and duties between employees on the System seniority roll and those on the Division seniority roll. Also, the wage rates for employees in each seniority category are very nearly the same. There is a little difference in Foremen's rates and there is an area differential in the carpenters rate for the Division gang. There are no mechanics rates for System Gangs and there are area mechanics rate differentials for Division Gangs. The Board, therefore, cannot assume that the duties, skills and abilities of the System and Division gangs are different. This is supported by the admitted facts of both parties that Division gang 26 was able to perform, at least for the most part, the same work which was being performed by the System gang 111.

The Carrier claims that System gangs generally perform specialized work. They argue that this type of work "has from time immemorial been performed by System gangs, or by contractors, and it is work that has never been done by a Division gang alone" (R 16). Carriers letter to the Organization dated July 10, 1956, stated:

"As you know, the System gangs are organized expressly to take care of work of a nature which Division forces are not equipped and qualified to do efficiently. In organizing such gangs, we draw upon the group of men holding System gang seniority who have been trained to efficiently and safely perform heavy work, the character of which is quite different from that involved in ordinary maintenance and repair work customarily handled by Division gangs." (R 30).

This evidence alone is not convincing that only "System gangs perform specialized work." On the contrary, there is some indication in the record that Division gang 26 was performing work similar to work of System gang 111.

The decision of the Board must be made on the interpretation of Rule 6(d). There are no previous decisions or awards to guide the Board. Neither party cited any Awards which materially affect such a decision. We agree with the general principle that lacking past practice the "Board must be bound by the clear language of an Agreement" (Award 10239). This Award continues:

"It is not a question as to whether we agree or disagree with the language. This Board can not rewrite or attempt to revise an Agreement entered into in good faith and with full knowledge of its full impact".

On the basis of the clear and simple language of Rule 6(d), System gang 111 had a right to work on bridges 0.86, 0.86A and 0.86B because on April 18, 1955, there was no Division gang "with the required supervision, experience and personnel . . . available on the seniority district to perform the work to which" the "System gang" was "assigned". Once having been properly assigned, System gang 111 was "not subject to displacement by employees holding Division seniority". Division gang 20 had no right under this Rule to displace System gang 111, neither did the claimants. The emphasis relied upon by the Organization that a "System gang will not supplant a Division gang" applies only to the first instance when a System gang is assigned. Once having complied with this requirement and having been properly assigned, it cannot be displaced by a Division gang even if it should have the required personnel, experience, etc.

Besides the clear meaning of Rule 6(d) it should be noted that there is nothing in the record to show that Division gang 20 or the claimants had "the required supervision, experience and personnel available . . . to perform the work to which" System gang 111 was assigned.

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 Employees involved in this dispute are respectively Carrier and Employees 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 Carrier did not violate the Agreement.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of February 1962.