

Award No. 10827

Docket No. MW-9714

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Wesley Miller, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
SOUTHERN PACIFIC COMPANY (PACIFIC LINES)**

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

1. The Carrier violated the effective Agreement when, on or about January 1, 1956, it temporarily transferred Extra Gangs Nos. 6, 8 and 12 from other Divisions to the Yuma Division and failed and refused to create and assign a like number of positions, notably three (3) positions of Extra Gang Foreman and one (1) position of Assistant Extra Gang Foreman as was assigned on said gangs, to the employees holding seniority in the Track Sub-department on the Yuma Division.

2. The employees holding seniority on the Yuma Division in the class of Section and Extra Gang Foreman each be allowed pay at their respective straight time rates for an equal proportionate share of the total man-hours consumed by the Extra Gang Foreman assigned to Extra Gangs Nos. 6, 8 and 12 during the period said extra gangs were used on the Yuma Division.

3. The employees holding seniority on the Yuma Division in the class of Assistant Section and Extra Gang Foreman each be allowed pay at their respective straight time rates for an equal proportionate share of the total man-hours consumed by the Assistant Extra Gang Foreman assigned to Extra Gang No. 12 during the period such extra gang was used on the Yuma Division.

EMPLOYEES' STATEMENT OF FACTS: On this property, when supervisory employees, such as Extra Gang Foremen and Assistant Extra Gang Foremen are temporarily transferred by direction of the Carrier from one division to another under the permissive features of Rule 10, it is an established and uniform practice to simultaneously create and assign a like number of similar positions to employees on the division to which the transfer has been effected, and for the entire period during which such employees from a foreign division are working on the division to which transferred.

On or about January 1, 1956, the Carrier temporarily transferred Extra Gangs Nos. 6 and 8, each under the supervision of an Extra Gang Foreman,

CONCLUSION

Carrier asserts that it has conclusively established that the claim in this docket is entirely lacking in either merit or agreement support; therefore, requests that said claim, if not dismissed, be denied.

All data herein submitted have been presented to the duly authorized representative of the employees and are made a part of the particular question in dispute. The carrier reserves the right, if and when it is furnished with the submission which has been or will be filed ex parte by the petitioner in this case, to make such further answer as may be necessary in relation to all allegations and claims as may be advanced by the petitioner in such submission, which cannot be forecast by the carrier at this time and have not been answered in this, the carrier's initial submission.

(Exhibits not reproduced.)

OPINION OF BOARD: The above claim arose from the following factual situation: In the early part of 1956, Carrier began the installation of a seven million dollar CTC operation through approximately 188 miles of track on its Yuma Division, and, in the carrying out of this project, moved in extra track gangs (accompanied by their respective foremen) from other Divisions.

It is not contended that this temporary transfer of personnel was unnecessary, nor that it was not permissible under the Agreement of the parties.

The crux of the grievance is that when the transfer was made, Carrier failed to create a duplicate number of Extra Gang Foreman and Assistant Extra Gang Foreman positions and fill them with employees from the Yuma Division, the Organization succinctly stating its objection to the procedure used as follows (first ex parte submission):

"On this property, when supervisory employees, such as Extra Gang Foremen and Assistant Extra Gang Foreman are temporarily transferred by direction of the Carrier from one division to another . . . it is an **established and uniform practice** to simultaneously create and assign a like number of similar positions to employees on the division to which the transfer has been effected, and for the entire period during which such employees from a foreign division are working on the division to which transferred." (Emphasis ours.)

In our opinion, the Organization presented insufficient evidence to prove the above allegation in regard to an "established and uniform practice". The Record does show that on April 16, 1951, Carrier's Assistant Manager of Personnel sent a letter to the General Chairman of the Brotherhood in reference to the transfer of Bridge and Building Sub-Department forces (from the Los Angeles Division to the Sacramento Division) which pertained to the

seniority status of the transferred employees; and that on April 17, 1951, he wrote the General Chairman a second letter, in which the following statement is found:

"... it is the established practice when supervisory employees occupying positions within the scope of the agreement covering Maintenance of Way Employees are transferred . . . a like number of positions are created and assigned to employees on the division to which the transfer is made."

On November 13, 1952, the parties signed a Memorandum of Understanding in which it is stated that the letter of understanding between the parties dated April 16, 1951 "shall continue in effect."

However, the Record also shows that both the said letter of April 17 and Memorandum of Understanding address themselves to the subject matter of the letter of April 16, which made specific reference to only Bridge and Building Sub-Department forces.

Standing alone, the letter of April 17 would be quite persuasive evidence in behalf of the Organization's point of view; however, when the particular wording relied upon is considered in the context of all of the statements made in this letter, the letter of April 16, 1951, the 1952 Memorandum of Understanding, and the facts disclosed in the Record, we cannot conclude that it is sufficient proof of an established past practice of the parties in regard to the Track Sub-Department.

The Record has been searched in vain for even one instance in which the Carrier created a dual supervisory force for track gangs which were temporarily transferred from one Division to another.

The Agreement of the parties makes no reference of any kind to the procedure the Organization alleges should have been followed in the Yuma Division, and, all things considered, we conclude that this claim should be denied on the substantive merits involved.

Having reached the above conclusion, it is not necessary to make findings on the other issues raised by the parties.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 10th day of October 1962.