Award No. 13932
Docket No. MW-13704

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Harold M. Weston, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

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

(1) The Carrier violated the Agreement, beginning on or about May 15, 1961 and continuing to September 11, 1961, when it failed to furnish a cook for Extra Gang No. 15 (E. K. Subdivision) while a foreman, five laborers and two (2) or more machine operators were working with said gang.

(2) Robert R. Mason be allowed eight (8) hours' pay at the camp car cook's straight time rate for each work day and holiday within the period beginning sixty (60) days prior to date claim was filed on September 18, 1961 and continuing to September 11, 1961. [sic]

EMPLOYES' STATEMENT OF FACTS: Extra Gang No. 15 consists of a foreman and five (5) laborers.

On or about May 15, 1961 the Carrier assigned two (2) tamper operators to work with the aforesaid Extra Gang No. 15. The total number of employes thus assigned to work in and with Extra Gang No. 15 was eight (8).

The Carrier did not furnish this gang with a cook until September 11, 1961, when the Claimant was assigned by bulletin award.

The Claimant was the senior furloughed cook, and was willing and available to perform service in this class during the entire period covered by this claim, had he been given the opportunity to work by the Carrier.

The Agreement in effect between the two parties to this dispute dated May 1, 1960, together with supplements, amendments, and interpretations thereto is by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: Rule 49(e) (1) reads:

"One cook will be furnished for each gang of seven (7) men or more, including the foreman, assistant foreman and machine opera-

Furthermore, as set out in the foregoing, they were assigned their own gang number, and had their individual camp car.

Carrier submits that Rule 49(e)(1) is clear in its wording and intent, and that it was not violated when the carrier refused to assign a cook to Extra Gang No. 15, and, therefore, the claim of the employes should be dismissed.

OPINION OF BOARD: The present case involves an interpretation of Rule 49(e)(1)'s requirement that "One cook will be furnished for each gang of seven (7) men or more, including the foreman, assistant foreman and machine operators working with the gang. . . ."

During the period in question, Extra Gang No. 15, consisting of a foreman and five laborers, was engaged in surfacing track on the Cincinnati Division. From about May 15, 1961, to September 11 of that year, a tamping machine operator and his assistant, designated Gang No. 101, were assigned to assist Gang No. 15 in their track surfacing work.

While a total of eight men thus were assigned to the operation, Carrier did not furnish a cook for them. It contends that a cook was not required, since Gangs 15 and 101 are unrelated, each is responsible for its own reports and time, and Gang No. 101 has its own camp car. There, nevertheless, appears to be no question, as Carrier's Chief Engineer's letter of October 17, 1961, and Assistant Division Engineer's letter of December 4, 1961, attest, that the two tamper men were working in conjunction with Gang No. 15.

The fair inference from this record is that, as a matter of substance, the eight men were working together in a common assignment and as part of a single gang, irrespective of their separate formal designations. Accordingly, a cook was required in accordance with Rule 49(e)(1) and the claim will be sustained.

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 Agreement was breached.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of October 1965.