

Award No. 15945

Docket No. MW-16375

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Bill Heskett, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**SOUTHERN PACIFIC COMPANY
(Pacific Lines)**

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

(1) The Carrier violated the Agreement when, on January 30 and February 6, 1965, it failed to call and use members of Extra Gang No. 8 to perform overtime work on their designated work limits but called and used forces from Powder Gang No. 1, who hold no seniority as track foreman and track laborers, to perform such overtime work.

(2) Track Foreman A. V. O'Hara and Track Laborer M. Beltram each be allowed twenty-four (24) hours' pay at their respective time and one-half rates because of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The claimants were regularly assigned members of Extra Gang No. 8, with fixed headquarters at Delta, California. Their designated work limits extended from Mile Post 271 to Mile Post 300.5. They were regularly assigned to work Monday through Friday of each week. Saturdays and Sundays were designated rest days.

On Saturday, January 30 and Saturday, February 6, 1965, the Carrier assigned Powder Gang Foreman C. L. Drinnon and Driller Helper V. R. Varela, who were regularly assigned members of Powder Gang No. 1, to perform track work on the claimants' territory. On Saturday, January 30, they distributed track material and on Saturday, February 6, they picked up track material with a work train and/or crane. They worked from 7:30 A. M. to 7:30 P. M. on each of the aforementioned dates. For this service they each received 24 hours' pay at their respective time and one-half rates. The claimants were available to perform the subject work.

Claim was timely and properly presented and handled by the Employees at all stages of appeal up to and including the Carrier's highest appellate officer.

The Agreement in effect between the two parties to this dispute dated July 1, 1964, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS:

1. There is in evidence an agreement (hereinafter referred to as the current agreement) between the Carrier and its employees represented by Petitioner, bearing effective date of July 1, 1964, a copy of which is on file with the Board and is hereby made a part of this submission.

2. On Saturday, January 30, 1965, and on dates prior thereto, Carrier operated a work train on the Sacramento Division engaged in ditching and spreading mud in connection with severe storm damage.

Working with this train from early November 1964 to late January 1965 were members of Powder Gang No. 1. On January 30, 1965, serving on the work train were Powder Foreman C. L. Drinnon and Driller Helper V. R. Varela, who assisted in the unloading of rip rap and in operations involving the ditching and spreading of mud. No member of the Powder Gang was used to perform service with a work train on February 6, 1965, for which date claim is also made in this case.

3. By letter dated March 13, 1965, Petitioner's Division Chairman presented claim to Carrier's Division Superintendent in behalf of Extra Gang Foreman A. V. O'Hara and Extra Gang Laborer M. Beltram for twenty-four hours each at the rate of time and one-half for work performed by Powder Foreman C. L. Drinnon and Driller Helper V. R. Varela, alleging violations of the current agreement, especially Rules 1, 3, 5, 10 and 28, when Carrier deprived and denied Claimants the right to perform their regular assigned duties in regard to track maintenance, when on January 30 and February 6, Carrier failed to call and use them in unloading material but instead called and used members of Powder Gang No. 1 to perform the work (Carrier's Exhibit A).

By letter dated May 10, 1965, Carrier's Division Superintendent denied the claim on the basis that Powder Gang crews have been used to assist in the unloading of track material and other work with work trains over a period of many years (Carrier's Exhibit B).

By letter dated June 17, 1965, Petitioner's General Chairman appealed the claim to Carrier's Assistant Manager of Personnel contending violations of Rules 1, 3, 5 and 25 (Carrier's Exhibit C), who denied same by letter dated August 10, 1965, on the basis that miscellaneous duties in connection with work trains have not in the past been limited to any particular class of employe, and members of the powder gang, who are also assigned to the Track Sub-Department, have often been used, to utilize their time when not engaged in powder work, to perform work of this nature, and that Extra Gang No. 8 had not previously been working on this work train prior to the claim date.

(Exhibits not reproduced.)

OPINION OF BOARD: The only factual difference between this docket and the circumstances in Award 15943 is the claim date. Therefore, we shall, for the reasons set out in the cited award, deny this claim.

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 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of November 1967.