



Award No. 18314

Docket No. MW-18787

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Paul C. Dugan, Referee

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**

**BURLINGTON NORTHERN INC.**

**(Formerly Chicago, Burlington & Quincy Railroad Company)**

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

(1) The Carrier violated the Agreement when it assigned the Bridgeport Section Gang instead of the Edgemont Section Gang to perform the work of unloading ties between M.P. 368 and Crawford, Nebraska on February 24, 25, 26 and March 3, 4 and 5, 1969.

(2) Section Foreman L. D. Scott and Section Laborers J. W. Brown, P. Martinez and L. A. Brown each be allowed forty-eight (48) hours' pay at their respective straight time rates because of the violation referred to within Part (1) of this claim.

(3) The Carrier shall also pay the claimants six (6%) percent interest per annum on the monetary allowances accruing from the initial claim date until paid.

**EMPLOYES' STATEMENT OF FACTS:** The claimants are the foreman and members of the section gang at Edgemont, South Dakota. Section foremen and section laborers hold Grade A and C seniority respectively within Group 1 of the Track Sub-department in accordance with Rule 2(a) which reads:

"(a) Employees assigned to constructing, repairing, and maintaining roadway and track and other work incident thereto, shall be grouped and graded under the Track Sub-department as follows:

Group	Occupations	Grade
1	Section Gang, Extra Gang, Fence Gang and Tile Gang Foremen .....	A
	Section Gang, Extra Gang, Fence Gang and Tile Gang Assistant Foremen .....	B
	Section Gang Laborers .....	C

eight hours at pro rata rate for such work on each of the claim dates. The claim is based upon the Employees' contention that the claimant Edgemont gang, instead of the Bridgeport gang, should have been used to assist in the unloading of ties between M.P. 368 and Hemingford.

**OPINION OF BOARD:** The Organization bases its claim herein on the grounds that Carrier violated the provisions of Rule 5(a) and (b) and Rule 13(a) of the Agreement when it permitted employes of the Bridgeport Section Gang to perform the work in question rather than Edgemont Section Gang members, on whose seniority district the work was performed.

Carrier's prime defense to this claim is that Claimants suffered no monetary loss as a result of Carrier's action in this matter.

Carrier, on the property, in denying the claim, relied solely on the defense that at no time were Claimants deprived of any earnings. Further, Carrier admitted, by letter dated May 16, 1969 from Carrier's L. A. Johnson to General Chairman H. J. McWilliams, that the Bridgeport Section Gang was used on a seniority district on which they held no seniority. Thus having admitted to the violation, we will sustain paragraph (1) of the claim.

In regard to damages, Claimants herein have failed to show any monetary loss as a result of said violation, and since this Board is not authorized to assess a penalty, we will deny paragraphs (2) and (3) of the claim.

**FINDINGS:** The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 violated in accordance with the Opinion.

#### AWARD

Paragraph (1) of the Statement of Claim is sustained.

Paragraphs (2) and (3) of the Statement of Claim are denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 4th day of December 1970.

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