

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20013
Docket Number MW-19861

Irwin M. Lieberman, Referee

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE:(
(Southern Pacific Transportation Company (Pacific Lines)

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

(1) The Carrier violated the Agreement when it failed and refused to allow Track Foreman Enos Garay pay at the specialized gang foreman's rate and when it failed and refused to abolish the position of Foreman, Extra Gang #1 and readvertise such position as "Foreman, Specialized Gang" beginning in October 1970 (System File MofW 145-577).

(2) Claimant Enos Garay be allowed the "difference in rate of pay between that of Track Foreman and that of Foreman, Specialized Gang, for 60 days retroactive to January 23, 1971 and all subsequent dates until the position is abolished and readvertised."

OPINION OF BOARD: Claimant was assigned to Extra Gang #1 as Foreman. Extra Gang #1 had been engaged in general track maintenance work. In October 1970 Carrier added a machine called a Gandy Dancer to the existing spot tamper equipment of the gang, converting the machine into a multiple tamper unit. Petitioner argues that since the addition of the new equipment, Claimant had been functioning as Specialized Gang Foreman, but without the pay for such position. The Organization relies primarily on Rule 27 which provides that when an employee is required to fill the position of another employee receiving a higher rate of pay, he shall receive the rate and also the Memorandum of Agreement effective October 1, 1965. Item 3 of that Memorandum provides as follows:

"3. It is understood that the gangs enumerated above to which title and rate of pay of Foreman, Specialized Gang shall be applicable, are those gangs subject to the current agreement which are established by this Memorandum and in the future may be established, which are regularly assigned to perform specialized track work, i.e., Division Tie Renewal Gangs, Division Surfacing Gangs and Division Rail Laying Gangs.

If in the future the duties of any of these gangs are changed so as to no longer regularly require the performance of specialized track work required of Division Tie Renewal Gangs, Division Surfacing Gangs and Division Rail Laying Gangs, as determined by Management, the position of foreman of such

"gang shall be abolished and readvertised with title and rate of pay of Track Foreman; similarly, in the event that a gang not now assigned to perform said specialized track work should subsequently be regularly assigned by Management to perform such duties, the position of Foreman in such gang shall be abolished and readvertised with title and rate of pay of Foreman, Specialized Gang."

An examination of the correspondence on the property indicates that Petitioner bases its claim on the addition of the Gandy Dancer to the spot tamper equipment and the subsequent activity of the gang described as: "...we tamp out of face like a regular surfacing gang...." We find no rule support or evidence in the record to persuade us that the use of particular equipment per se makes the work of a gang fall into the category of a "specialized gang"; similarly there is nothing to indicate that track work "out of face" is solely restricted to specialized gangs. Assuming, arguendo, that the work of Extra Gang #1 was identical to that of specialized gangs, the clear language of the Memorandum of Agreement does not support the claim. Item 3 of the Memorandum quoted above specifies that the higher rate will be paid when the specialized work is regularly assigned to the gang by management. Without speculation as to the motivation of the parties when they executed the Memorandum, the clear language vests exclusively in Carrier the prerogative of determining whether or not a gang is to be regularly assigned as a specialized gang.

Since there is no rule support for the claim, the language of the Memorandum is unmistakeably clear and we have no authority to rewrite rules, the claim must be denied.

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 not violated.

Award Number 20013
Docket Number MW-19861

Page 3

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 31st day of October 1973,