

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22846  
Docket Number MW-22856

George E. Larney, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(  
(The Baltimore and Ohio Railroad Company

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

(1) The Agreement was violated when, on December 13, 1977, the Carrier called and used Messrs. J. H. Allman, Joseph Yakupcak, Steve Yakupcak and C. C. Ball for overtime service at about M.P. 57 instead of calling and using Foreman Charles E. Hartley, Trackman J. W. Gibson, C. R. Wyer and G. Fluharty (System File NEW-1048/2-MG-2083).

(2) As a consequence of the aforesaid violation Foreman Charles E. Hartley and Trackman J. W. Gibson, C. R. Wyer and Gary Fluharty shall each be allowed four and one-half (4-1/2) hours of pay at their respective time and one-half rates."

OPINION OF BOARD: On December 13, 1977, a track joint pulled apart at Mile Post 57, located about five (5) miles west of Cambridge, Ohio and about twenty-one (21) miles east of Zanesville, Ohio. In order to effect the necessary repairs, the Carrier called and used the Cambridge Line Gang.

It is the Organization's position that Carrier violated Rule 24(e-1) of the Controlling Agreement bearing effective date of October 1, 1968, when it utilized the Cambridge Line Gang to effect the repairs rather than calling the Zanesville Line Gang. This rule reads as follows:

"RULE 24

OVERTIME

\* \* \* \*

(e-1) When overtime service is to be performed on a territory assigned to a Section Gang and an Extra Gang, the Foreman of the Section Gang will be given first preference. If the Section Gang Foreman is not available or if additional forces are required, the Extra Gang Foreman will be called. In the event employees assigned to the Section Gang are not available, employees assigned to the Extra Gang may be utilized up to number assigned to the Section Gang, without calling Extra Gang Foreman."

The Organization maintains that Rule 24(e-1), clearly sets forth the procedure for calling and using employees assigned to a section territory for overtime service specifically stipulating that the foreman assigned to the section territory will be given first preference to perform overtime service. The Organization asserts that the Zanesville Line Gang is assigned the territorial limits between Mile Post 52.5 to Mile Post 82 on the Central Ohio Sub-Division of the Ohio Division of the Carrier and supports this assertion by reference to a document identified as Letter No. 1.

The Carrier on the other hand argues that Rule 24(e-1) was substantially modified when the parties entered into a Memorandum of Agreement dated August 7, 1975. That Memorandum, the Carrier maintains, effected a realignment of the Carrier's track forces by consolidating the seniority rosters of Carrier's Subdivisions N-1, N-2, N-3, N-4, N-5, and N-6, into one (1) North End Seniority Roster. In conjunction with this consolidation, according to the Carrier, track forces were reclassified by establishing (a) yard gangs, (b) line gangs, and (c) production gangs and seniority districts were expanded. As a result, those employees who formerly worked on the subdivisions and had their seniority rights restricted thereto, acquired expanded work opportunity. Thus, prior to the August 7, 1975 Agreement the Cambridge Gang was restricted to work within the territory of Sub-Division No. 1 while the Zanesville Gang was restricted to work within the territory of Sub-Division No. 2. According to the Carrier, the August 7, 1975 Agreement provided that those employees, with seniority rights previously established on the former subdivision, would acquire "prior rights" to positions advertised with headquarters on their former subdivision but that nothing in the Memorandum Agreement gave those employees "prior rights" to work that might be performed on the former subdivision. This being so, the Carrier asserts that the August 7, 1975 Agreement and not Rule 24(e-1) is controlling in determining which gang, under the circumstances, would have preference to overtime service at a given location.

Under the circumstances at bar, the Carrier asserts that the "test" in determining which of the two line gangs would have preference to the overtime service required to effect repairs at Mile Post 57 is, that gang which ordinarily performs maintenance in the area. Such a test was applied by Carrier in the instant case and Carrier determined that the Cambridge Line Gang and not the Zanesville Line Gang was to be called and used to effect the repairs.

The Board notes in its review of the instant case that the document referred to by the Organization as Letter No. 1, notwithstanding its possible relevance to the claim is, in fact, new evidence and as such cannot be considered by us at this appellate level. Absent consideration

of Letter 1, it is our determination the Organization has failed, on account of lack of proof, to show a Contract violation based on the relationship between the Zanesville Line Gang and the territory in question and therefore we find we must dismiss 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 not violated.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A. W. Pauls  
Executive Secretary

Dated at Chicago, Illinois, this 16th day of May 1980.