

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25830
Docket Number MW-25885

John E. Cloney, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Union Pacific Railroad Company

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

(1) The Carrier violated the Agreement when it assigned B&B Gang 3421 instead of Track Subdepartment Sectionmen K. M. Higel, W. E. Erickson, D. J. Doering and R. J. Roth to perform the work of renewing ties in the 14th Street crossing in Hastings, Nebraska on January 11, 12, 13, 14, 18, 19, 20 and 21, 1982 (System File 4-14-13-14-54/013-210-8).

(2) As a consequence of the aforesaid violation, Messrs. K. M. Higel, W. E. Erickson, D. J. Doering and R. J. Roth shall each be allowed fifty-one and one-half (51 1/2) hours of pay at the sectionmen's straight time rate.

OPINION OF BOARD: The four Claimants in this case held seniority as Sectionmen in the Track Subdepartment. They were on furlough on the dates for which claim is made.

Various Rules are involved. Rule 1, (Scope) provides: "This agreement will govern the wages and working conditions of employees in the Maintenance of Way and Structures Department listed in Rule 4 represented by the Brotherhood of Maintenance of Way Employees Organization".

Rules 2 and 3 define the Bridge and Building Subdepartment and the Track Subdepartment as subdepartments (among others) of the Maintenance of Way and Structures Department. Rule 4 defines Seniority groups within the various subdepartments. Group 3 of the Bridge and Building Subdepartment includes the classification "Carpenter" while Group 17(a) of the Track Subdepartment is the classification "Sectionman".

Rule 9, "Track Subdepartment," states in part:

"Construction and Maintenance of roadway and track, such as rail laying, tie renewals, ballasting, surfacing and lining track, fabrication of track panels, maintaining and renewing frogs, switches, railroad crossing, etc., repairing existing right-of-way fences, construction of new fences up to one continuous mile, ordinary individual repair or replacement of signs, mowing and cleaning right-of-way, loading, unloading and handling of track material and other work incidental thereto shall be performed by forces in the Track Department.

"

"(T) Sectionman. Employee assigned on section or track maintenance gangs to perform work which has customarily been recognized as Sectionman's work."

The Organization claims that on the dates in question the Carrier assigned Bridge and Building Subdepartment employees to the work of "digging out and pulling out old ties in the crossing, installing new ties and placing new ballast in the crossing for the surfacing and lining thereof..." at a crossing in Hastings, Nebraska.

In declining the claim on March 30, 1982 Division Engineer Griffin wrote:

"...B & B Subdepartment employees did not remove any ties, install new ties or place ballast in the crossing ... B & B foreman Lang did assist the two section forces by breaking out frozen mud and ballast to the bottom of the ties with the air compressor and paving breaker ... assigned to the B & B Gang in order to help expedite the work"

Griffin further noted the Agreement provides for composite gangs in crossing repair work. On May 25, 1982 the Organization advanced the claim to the Carrier's Director of Labor Relations. In response to the denial that certain work had been done it furnished a statement signed by six Track Subdepartment employees who had worked on the project. This statement asserted in part:

"The work performed by B & B employees involved shoveling out old ballast between ties, helping in the removal of old eight foot ties, helping in the installation of new nine foot ties, aligning and nipping of new ties prior to spiking, and the shoveling in of new ballast."

On July 19 the Labor Relations Director asserted Carrier had a statement from the B & B Foreman which conflicted with that of the employees. He did not furnish a copy but stated he did not believe performance of Track Subdepartment work by B & B employees "who are merely assisting in the track work would necessarily constitute" a violation. He further mentioned that Track Subdepartment employees apparently also assisted in B & B work with no protest having been made.

The Carrier argues (1) No proof of exclusivity was made by the Organization, (2) Rule 13 allows use of composite gangs in the situation here, and (3) Claimants were junior to others on furlough and are therefore not proper Claimants.

In the opinion of this Board the Rules with which we are dealing here are sufficiently specific to preclude necessity for proof of historic exclusivity. In our view, Rule 9 reserves to the Track Subdepartment the work alleged to have been performed by B & B Subdepartment employees. We further believe there is no longer a real dispute as to what work the B & B Subdepartment employees did. While Carrier initially indicated only certain work was done by one Foreman it made no meaningful response to the written statement of the six Sectionmen. Carrier's reliance upon Rule 13, Section 1 dealing with Bridge and Building Subdepartment composite gangs is misplaced. There is no evidence that as originally constituted this crew purported to be of a type set forth in the Rule and Carrier's original position regarding the incidental and minimal nature of the work performed by the B & B Subdepartment employees is inconsistent with such claim.

The Organization has filed a claim alleging a Rule violation. Numerous Awards of this Board have held the question of who is named as claimant is incidental although of course Carrier will not be required to pay more than once. As we find the Rule was violated we shall sustain 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.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 13th day of January 1986.