

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 29977
Docket No. MW-28820
93-3-89-3-222

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Union Pacific Railroad Company (former
(Missouri Pacific Railroad Company)

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

- (1) The Agreement was violated when the Carrier assigned System Rail Gang 9111, instead of Kansas Division forces, to perform routine track maintenance (gauging small trouble spots, driving rattle spikes and adjusting anchors) on the Kansas Division beginning February 21, 1988 (Carrier's File 880236 MPR).
- (2) As a consequence of the aforesaid violation, the fifty (50) senior furloughed Kansas Division employees listed below* shall receive pay for:

'eight (8) hours per day at the straight time rate of pay, and any punitive and Holiday pay per Claimant (sic), and any additional expense incurred by the Claimants (sic) that would normally be covered by benefits paid by the Carrier. This claim is against all work performed by SYSTEM RAIL GANG #9111 within the boundaries of the KANSAS DIVISION, and is to begin at start of shift on FEBRUARY 21, and continue for every day worked.'

*R. C. Pratt	E. R. Croucher	L. R. Furman
E. E. Pratt	D. E. Ware	R. A. Watson
J. L. Barnes	K. E. Davis	R. A. Herrman
R. F. Conrad	E. C. Benson	J. G. Clark, Jr.
R. E. Rosbia	R. W. Cambron	L. W. Thomas
C. Moore	W. R. Fennewald	G. L. Guimond
C. J. Vargas	C. T. Frederking	R. C. Combs
E. R. McCleary	J. L. Jasper	S. P. Pittullo
W. E. Sones	J. D. Brown	R. D. Smith
J. G. Tompkins	R. R. Charles	L. L. Green
C. J. Vallejo	R. L. Newman	S. D. Coffelt
M. A. Barnett	J. F. Weirich	M. B. Garcia

E. L. Scott, Jr.	P. O. Stewart, Sr.	M. D. Heinrich
L. P. Ross	S. I. Vallejo	W. H. Poyner
W. E. Fisher	R. W. Higginbotham	L. J. Hartman
F. D. Seyfert	D. D. Tooley	J. J. Tersiner"
T. W. Miles	R. E. Lamar	

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

On February 3, 1988, the Carrier assigned System Rail Gang 9111 to perform track maintenance work between Leeds, Missouri and Coffeyville, Kansas.

The Organization filed a Claim on behalf of 50 furloughed Claimants contending that the Carrier was in violation of Rules 1 and 2 of the current Agreement because it assigned Division work to a System Gang instead of using the furloughed Division Gang.

The Carrier denied the claim stating that there was no violation of the Agreement. The Carrier's contention was that since this was a 142-mile project, it "assigned the work to a gang which had system (entire Railroad) seniority rather than Division (an established territory) seniority", and also because "the work encompassed three (3) different seniority districts."

After an appeal by the Organization, the Carrier denied the claim again contending that the work in question has not been historically performed exclusively by division gangs. Therefore, the Carrier contends that the Organization failed to meet its burden of proof.

The Organization submitted another appeal contending that the Memorandum Agreement of December 17, 1951 was also violated. The Carrier once again denied the appeal stating that it does not "see any applicability to the instant case" because the Memorandum does not cover the territory in question.

The Board has reviewed the extensive record in this case and we find that the Organization has failed to meet its burden of proof that there was a violation of the Rules. Therefore, the Claim must be denied.

The record is clear that the Rule that is cited by the Organization is not applicable to this dispute. Thirty-two years after the Agreement upon which the Organization relies, the parties entered into an Agreement which allows for the creation of system gangs and does not prohibit the Carrier from allowing the system gangs to perform work such as that which was performed in this case. Hence, there is no Agreement that restricts the type of work that was performed by the system gang.

Moreover, the Organization has not shown sufficient evidence that a past practice existed that required the Carrier to only use certain employees for the work involved here.

The Organization has not presented sufficient proof that when the Carrier used a system gang to perform the work in this matter, that it violated any Agreement or past practice restricting it from doing so. This Board does not even look into the magnitude of the work issue because we find no restrictions on the Carrier's actions in this case.

The Organization bears the burden of proof in jurisdictional disputes of this kind. The Organization has not met its burden. Therefore, the claim must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 17th day of December 1993.