

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30086
Docket No. MW-29303
94-3-90-3-217

The Third Division consisted of the regular members and in addition Referee Charlotte Gold when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(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 No. 9108 instead of Omaha Division employees to replace switches in the Nebraska City Yards and at Paul, Nebraska beginning February 1 and continuing through February 19, 1989 (Carrier's File 890202 MPR).
2. As a consequence of the aforesaid violation, Foreman J.L. Guatney, Trackmen P.B. Benshoof, M.W. Wilburn, T.D. Clark, M.D. Hennigh, N.E. Ford and Machine Operator J.S. Horton shall each be allowed one hundred four (104) hours of pay at their respective straight time rates and forty-eight (48) hours of pay at their respective time and one-half rates. In addition, each of the Claimants shall be made whole for any fringe benefit loss suffered."

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.

By a letter dated March 14, 1989, the Organization filed a claim on behalf of seven furloughed Omaha Division employees for work performed between February 1 and 19, 1989. At issue was the replacement of switches by a System Rail Gang in the Nebraska City yards and in Paul, Nebraska. Carrier denied the claim, disputing the Organization's contention that there was an Agreement that limited System Rail Gangs to laying rail. It also argued that while Claimants may have performed this type of work in the past, there was no indication that they had done so exclusively.

This Board finds the facts of this case to be on all fours with those in Third Division Award 29977 in a dispute involving the same parties. As in that instance, the Organization relies in part on a Memorandum of Agreement of December 17, 1951, subtitled "Applicable on the Southern South District only," wherein it indicates that System Rail Gangs can be used in work other than rail laying only by mutual agreement between the General Chairman and Assistant Chief Engineer. Although Carrier contends that this Agreement was not addressed on the property, the Organization cites its initial claim wherein it speaks of "the System Rail Gang Agreement."

Award 29977 concluded that:

"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."

We so hold here.

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 15th day of March 1994.