

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30283
Docket No. MW-28952
94-3-89-3-357

The Third Division consisted of regular members and in addition Referee Gil Vernon when award was rendered.

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

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

- (1) The Agreement was violated when sectionmen from Seniority District 60172 (Rupert Section) were used to perform track maintenance work on Seniority District 60171 instead of assigning Sectionmen G. J. Crossman and R. R. Hutchinson, Jr., (System File 1580-16/880182).
- (2) As a consequence of the violation referred to in Part (1) hereof, the Claimants shall be allowed sixteen (16) hours of pay at their pro rata rate."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 24, 1988, the Organization filed the following claim:

"We submit to you herewith a claim in behalf of furloughed Idaho Division Seniority District 60171 Sectionmen G. J. Crossman, SSN. 517-72-2510, and R. R. Hutchinson, Jr., SSN. 520-52-3938, because the Carrier violated the Agreement, specifically, but not restricted to rules 1, 8, 16, 18, 20 and Appendix G when on it failed to assign Claimants the track maintenance work of following the DAPCO detector car from Minidoka, Idaho, Mile Post 272.9 to Each Michaud, Idaho, Mile Post 218 on January 28 and 29, 1988. This trackage is located within the recognized boundaries of District 60171, therefore Claimants should have been used to perform sectionman duties within this territory. The Carrier assigned said duties and functions to the Rupert Section, who hold and maintain rights in, Seniority District 60172 thereby denying Claimants of work and compensation they are entitled to by virtue of their seniority and assignment.

"It is our contention Claimants Crossman and Hutchinson should have been assigned the duties of track work between Minidoka and Mile Post 218 which is assigned to employees assigned to Seniority District 60171 because the Agreement provides employees who hold seniority on a particular district preform (sic) the duties and functions on that district.

"My investigation reveals that on January 28 and 29, 1988, two (2) sectionmen from the Rupert Section preformed (sic) track maintenance on trackage between Minidoka and Mile Post 218 while following the DAPCO detector care.

"Claimants all have and maintain seniority dates on Seniority District 60171, which extends from main line Granger, Wyoming to Shoshone, Idaho, 4th Subdivision, Pocatello, Idaho, to Silver Bow, Montana, and Branches. Territory formerly comprised of Seniority Districts Nos. 105, 106, 107, 108, 109, and 110. The sectionmen from Seniority District 60172 hold no rights or seniority privileges from Minidoka to Mile Post 218 and should have not been used in this territory.

"As compensation for loss of work opportunity suffered by Claimants Crossman and Hutchinson for work performed on Seniority District 60171 by the section forces from Seniority District 60172 this letter claims pay for sixteen (16) hours of pay in behalf of each Claimant at his respective rate of pay. This claim is considered continuous if the Carrier does not assign employees from Seniority Roster 60171 to preform (sic) sectionmans work their assigned territories.

"Your favorable consideration and advise (sic) would be greatly appreciated."

The Carrier responded to the Claim indicating that the Organization, in its opinion, had not provided sufficient information to sustain the Claim or to enable the Carrier to adequately investigate the Claim. Specifically, it contended that the Organization failed to identify who performed the work. After the Claims conference, the Organization identified three individuals by name, all members of the Rupert Section, who performed the work in question. To this the Carrier replied as follows:

"Reference Mr. Larsen's letter of February 24, 1988, filing a Claim on behalf of Idaho Division Sectionmen G. J. Crossman and R. R. Hutchinson.

"This Claim was discussed in conference on April 18, 1989, at which time our respective files were reviewed. During conference you were informed that the Claim did not contain enough information in order to properly research. Because of this, the Claim was declined in its entirety.

"Mysteriously, seven days after conference, and approximately fourteen months after the initial Claim was filed, you were able to produce the alleged individuals who performed the work. As you realize, it is impossible for the Carrier to properly research this Claim after such a long period of time. If the Organization was able to obtain this information at this date, it could have produced it fourteen months ago.

"The Claim is again declined in its entirety."

At the Board, the Carrier in its Submission persisted in its argument that because the Organization failed to identify who performed the alleged work, the Carrier was unable to determine if the work had been performed. The ultimate identification of the individuals was too late.

The Board finds the Carrier's procedural argument to be meritless. It claims that the Organization did not identify who did the work in question. Yet, the initial Claim identified the culprits as "The Rupert Section Gang." The Carrier, without a basis in the evidence or in reason, argued that this was not sufficient for it to investigate the Claim. The Board cannot resist the temptation to classify this argument for what it is--ridiculous. Given that the claim asserted that "The Rupert Section Gang" performed the work, the Carrier had sufficient information to verify the allegations set forth in the Claim. It simply needed to pick up the phone, call the Manager in charge of the Rupert Section crew, and ask if they had performed the work in question. With only three members on the Section Gang, this could not be very difficult.

The Board notes that the Carrier offered no defense on the merits. The Carrier was faced with a verifiable allegation and produced nothing to rebut it. Accordingly, the factual assertions of the Organization, to wit, that the Rupert Gang performed work outside their senior district, must stand. Moreover, there is no rebuttal in the record to the Organization's contention that the Agreement prohibits members of one seniority district from performing service on another seniority district. Last, we note that the Claimants were furloughed. Therefore, they were available, and there was lost work opportunity.

In view of the foregoing, the claim must be sustained.

AWARD

Claim sustained.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 19th day of July 1994.