

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30765
Docket No. MW-28107
95-3-87-3-684

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(CSX Transportation, Inc. (former Louisville
(and Nashville Railroad Company)

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

(1) The Carrier violated the Agreement when it assigned System Bridge Erecting Gang 5X06 to perform bridge painting work on the K&A Subdivision beginning March 17, 1986 [System File 5-55-86/12-60(86-221)]

(2) As a consequence of the aforesaid violation, K&A Subdivision B&B Foreman F. J. Henry, B&B Carpenters H. R. Woody, L. B. Woody, J. T. Thomas and B&B Helpers M. R. Woody and J. A. Ogle shall each be allowed eight (8) hours of pay at their respective rates for each work day beginning March 17, 1986 and continuing for so long as System Bridge Erecting Gang 5X06 performed bridge painting work on the K&A Subdivision."

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.

By bulletins dated February 19, 1986, The Carrier established System Bridge Erecting Gang 5X06 advertising positions for a Foreman, four Painters, four Painter Helpers, two Repairmen and a Cook. The jobs were awarded to individuals who did not hold seniority on the K&A Subdivision.

Commencing March 17, 1986, Gang 5X06 worked on the Tennessee River Bridge at Knoxville, Tennessee. Claim was filed for Claimants who hold seniority on the K&A Subdivision alleging that Gang 5X06 was improperly assigned to perform bridge painting work in that district.

Rule 4(b) establishes seniority districts. Rule 60 states:

"RULE 60. System Bridge Erecting Gang.

60(a). The railroad company may establish, without seniority restrictions on the assignment and retention of the men therein, a gang to be known as the Bridge erecting gang. The primary purpose of this gang shall be for the erecting and repairing of steel bridges at any point on the system, but when it is not engaged in this work it may be used on other bridge and building work, provided such use will not result in a divisional gang being cutoff."

The claim must fail due to insufficient proof. Rule 60 permits the establishment of a System Bridge Erecting Gang "without seniority restrictions on the assignment and retention of men therein" The Carrier cannot use Rule 60 to circumvent the requirements for district seniority under Rule 4. However, in this case the Organization failed to factually establish that Gang 5X06 was established for something other than the stated primary purpose of erecting and repairing bridges.

The fact that painting may have been performed by Gang 5X06 does not, by itself, satisfy the Organization's burden in this case. Rule 60 clearly permits the gang to be "used on other bridge and building work" when not engaged in its "primary purpose of ... erecting and repairing of steel bridges on any point on the system ... provided such use will not result in a divisional gang being cutoff." There is no evidence in this record that the gang was being used at the time for work other than its secondary purpose permitted by Rule 60 or that a divisional gang was cutoff because of the gang's secondary activity.

Without more, we must deny the claim.

AWARD

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 6th day of April 1995.