

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31352
Docket No. MW-30992
96-3-92-3-812

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Bangor and Aroostook Railroad Company

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

- (1) The Agreement was violated when the Carrier abolished the positions assigned to the System Tie Crew and thereafter assigned work accruing to said forces to be performed by the Millinocket and Madawaska section forces beginning July 10, 1991 and continuing (Carrier's File 149.4.3).
- (2) As a consequence of the violation referred to in Part (1) above, the Claimants * listed below shall each be paid a daily per diem of twenty-nine dollars (\$29.00), the applicable mileage expense for traveling from their respective homes to their assigned work sites and their return thereto beginning July 10, 1991 and Claimants L.G. Goodine and R. Oullette shall also be compensated for the difference in pay between the section foreman's rate and the extra gang foreman's rate and all extra gang foreman's rights as of July 10, 1991.

* L.G. Goodine	G. Voisine
K. Ireland	T.A. Lapoint
J. D. Tarr	J.G. Chasse
M.A. Veysey	D. Rossignol
J.S. Copeland	D. McAfee
J. Tinkham	D. Cousins"
R. Oullette	

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.

At issue in this case is the application and interpretation of Memorandum of Agreement No. 16, between the Parties, effective January 17, 1991. The Memorandum reads in pertinent part as follows:

"The Company may establish one or more production track work gang not assigned fixed headquarters including, but not limited to:

- | | |
|--------------------------|-----------------------|
| 1. Tie installation gang | 4. B&B system gang |
| 2. Surfacing gang | 5. B&B carpenter gang |
| 3. Mechanical brush gang | |

* * *

When the company intends to establish a production gang, it shall attempt to give at least thirty days written notice thereof to the General Chairman and Vice General Chairman such notice to contain information relative to the following:

1. Type of production gang;
2. Description of territory over which it is programmed to work;
3. Estimated length of time production gang will operate;
4. Number of positions in each classification assigned to the gang;
5. Number of days per week gang will operate;
6. The Company retains the right to make changes, modifications or deletions to such plans at all times."

By letter of March 7, 1991, Carrier sent the Organization's General Chairman notice of a proposed construction schedule for system gangs. Among the gangs to be established was a System Tie Gang, to be established for the period April 16, 1991, through June 24, 1991, (the starting date was later postponed to May 2). On April 18, 1991, Carrier issued Job Bulletin No. 390 for a System Extra Gang, a crew of thirteen employees. The notice stated that the per diem for the Extra Gang would be \$29.00. On May 2, 1991, Carrier issued a notice of award of positions advertised in Job Bulletin No. 390.

On June 25, 1991, Carrier issued a notice abolishing the Extra Gang (Tie Crew) at the close of work Friday, July 5, 1991. On that same day, Carrier issued Job Bulletins No. 407 and 408 for Foreman and Operators to be Headquartered at Millinocket and Madawaska, respectively. On July 10, 1991, Carrier issued notices of award of positions advertised in Job Bulletins No. 407 and 408. On July 25, 1991, Carrier issued Job Bulletin No. 415 for "System Extra Gang - Tie Crew". That notice included provision of an "Outfit" of \$10.00 per day.

By letter of August 5, 1991, the Organization filed a claim with Carrier on behalf of members of the original System Tie Gang. That claim alleged that Carrier had violated the Agreement between the Parties when it abolished the tie gang and reassigned the work to new gangs working at the Madawaska and Millinocket yards. The Organization asked that the Claimant's named be paid the \$29.00 per diem for each day to compensate them for their travel from home to work and return. In addition, the Organization claimed that Claimants Goodine and Oullette were entitled to the difference between the Section Foreman rate they were being paid and Extra Gang Foreman rate to which it said they were entitled. Such payment was to be made for the period July 10, 1991 (the date of the awarding of the positions at Millinocket and Madawaska) through August 19, 1991, when the tie crew was to be reassigned with a camp car as per Job Bulletin No. 415 (*supra*). By letter of August 13, 1991, the Carrier denied the claim and it was subsequently progressed in the usual manner.

With respect to the first part of the instant claim, the position of the Organization is, essentially, that Carrier's original abolishment of the Extra Gang was contrary to the agreement between the Parties, since the work being performed by that Gang was then performed by the newly-constituted crews headquartered at Millinocket and Madawaska sections. Carrier maintains that it clearly notified the Organization on March 7, 1991, that the Extra Gang would be abolished and rebid with outfit cars and a cook -- thus obviating any requirement for a per diem.

While Carrier did not keep exactly to its originally proposed schedule, it is apparent from this record that Carrier complied with the January 17, 1991 Memorandum of Agreement. Moreover, that Agreement provides that there may be changes in crews so established -- a point restated in Carrier's March 7, 1991 letter to the Organization. The abolishment of the Extra Gang and subsequently issued Job Bulletins do not constitute a violation of the January 17, 1991 Agreement. Thus, the Board finds that the Claimants were entitled to the per diem payment only until the date their Extra Gang was abolished.

With respect to the second part of the claim, since Claimants Goodine and Oullette were not erroneously removed from Extra Gang Foreman positions, they are entitled only to that compensation commensurate with positions they actually were awarded. Accordingly, that portion of the Organization's claim must be denied as well.

AWARD

Claim denied.

ORDER

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 25th day of January 1996.