

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32326
Docket No. MW-31972
97-3-94-3-324**

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

PARTIES TO DISPUTE: (**Brotherhood of Maintenance of Way Employees**
(**Consolidated Rail Corporation**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned Youngstown Seniority District employees to replace 7800 feet of rail in the Ashtabula Ohio Harbor Yard beginning November 30 and concluding on December 18, 1992, instead of assigning Inter-regional Rail Gang employees (System Docket MW-2934).**
- (2) As a consequence of the violations referred to in Part (1) above, the Claimants listed below shall each be '... paid five ten hour days at their applicable and respective rate of pay. Additionally, all other lost wages and/or credits normally due'**

**K. C. Burns
E. F. Slebodnick
R. J. Miller
T. M. Williams
J. L. Brown
S. J. Alterio
E. C. Geisbrecht
J. W. Mosser
O. K. McConnell
J. L. Myers
R. P. Dunmyer
F. J. Eckenrode**

**W. J. Shutty
R. C. Forshey
K. E. Hoffer
W. L. Morgan
S. H. McDermott
J. A. Kephart
W. K. Carruthers
W. D. Davis
R. V. Engelman
R. W. Hunt
D. R. James
R. F. James**

M. R. Recinella
H. C. Beck
V. M. Phillippi
J. Abrams
G. F. McGuire

D. J. McDermott
G. S. Novak
P. D. Snyder
T. A. Novak"

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 were given due notice of hearing thereon.

This dispute involves Carrier's assignment of rail replacement work (removal and replacement of 7800 feet of rail at the Ashtabula Ohio Harbor Yard) to regular Youngstown Seniority District forces between November 30 and December 18, 1992 rather than to Claimants, members of Inter-regional Rail Gang #2.

The Organization contends that there has historically been a clear line of demarcation between use of regular forces to perform small rail replacement jobs and the assignment of Inter-regional forces to perform extensive, wholesale rail replacement projects such as the one involved herein. It argues that the intent, purpose and application of Rules 1 and 4 establishing Inter-regional gangs was to perform rail removal and replacement work of the character and magnitude involved here, and that the Scope Rule and Appendix D require assignment of Carrier's rail renewal work to Inter-regional gangs. The Organization notes that although Claimants were working on the dates involved, they were all furloughed on January 14, 1993, and could have been available to perform this work either by reassignment in December or at the completion of their work season, since no evidence concerning the emergency nature of the work was proffered by Carrier, citing Third Division Awards 13832, 15497, 21678 and 24897.

Carrier initially raises the procedural argument that the claim lacks specificity by failing to properly identify the individuals who allegedly performed the work in issue and the time spent by them performing it. It avers that this claim must be dismissed for lack of specificity, relying on Third Division Award 19960 and Second Division Award 11385.

Carrier argues that Claimants do not have a contractual right to perform the work in issue, and that the Scope Rule does not prohibit Subdivision Forces working within their Seniority Districts from performing this work, citing Third Division Award 29582; Special Board of Adjustment No. 1016, Award 22; Public Law Board No. 3781, Award 22. Carrier contends that since Claimants were fully employed elsewhere at the time it properly determined the work needed to be performed, they were unavailable to do the work in issue, and have suffered no monetary loss.

A review of the record convinces us that the Organization has failed to sustain its burden of proving that any of the cited Rules gives a fully-employed Inter-regional gang any more of a right to lay the rail in issue than the same classification of employees within the Subdivision. We first note that this case concerns two groups of Youngstown Seniority District employees, so that any rules concerning reservation of work within a specific seniority district do not apply.

The Organization does not rely herein upon an argument that the classification of work rule grants exclusivity to Inter-regional gangs for the laying of rail, and it has been held to the contrary on this property. Third Division Award 29582; Special Board of Adjustment No. 1016, Award 22. This Agreement contains no reservation of work rule concerning the laying of rail to Inter-regional gangs as opposed to Subdivision gangs. Rather, the Organization argues that, as recognized by Appendix D, Inter-regional gangs have long performed the majority of rail renewals and were traditionally used by Carrier on jobs of this magnitude. It contends that the Scope Rule recognizes work to accrue to those who have historically performed it on the basis of past practice.

We find nothing in the provisions of this Agreement delineating the assignment of work by the specific size of the project or limiting Divisional forces to the replacement of a designated number of feet of rail. Further, the Union failed to sustain its burden of proving in this case that there has been an established past practice of Carrier to assign Inter-regional gangs only to rail renewals of the size involved herein. Since the

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Claimants' were unavailable at the time of the work assignment, we find no contract violation in the instant case.

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 13th day of November 1997.