

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 35412
Docket No. MW-34563
01-3-98-3-209

The Third Division consisted of the regular members and in addition Referee Nancy F. Murphy when award was rendered.

PARTIES TO DISPUTE: (**(Brotherhood of Maintenance of Way Employes**
(CSX Transportation, Inc. (former Clinchfield
(Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned SPG Gang 5XC3 (curve patch gang) to gauge track in front of SPG Tie Gang 5XT1 between Mile Post 184.0 Flotation to Mile Post 188.7 Ridge on the Clinchfield Seniority District on April 10 through May 2, 1996 instead of assigning the Claimants, listed below, who have established and hold seniority on the Clinchfield Railroad Seniority Roster [Carrier’s File 12 (96-1155) CLR].**

- (2) As a consequence of the violation referred to in Part (1) above, the Claimants, listed below, shall each be allowed one hundred forty (140) hours’ pay at their respective straight time rates.**

F. R. Ollis	K. W. Shell
V. Peterson	S. E. Adkins
F. D. Edwards	J. B. Rogers
C. S. Furches	R. J. Bennett
T. L. Peterson	J. M. Edwards
M. T. Williams	A. L. Peterson
J. W. Peterson	C. Edwards
P. M. Blankenship	K. C. Edwards
R. G. Garland	D. L. Ayers
R. G. Bennett”	

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.

The 1991 National Agreement provided for the establishment of System Production Gangs (hereinafter referred to as "SPGs") of 20 or more employees that may work over multiple districts in order to perform scheduled work. The 1996 National Agreement describes SPGs as "heavily mechanized and mobile, continuously performing specific, programmed, major repair and replacement work utilizing a substantial (no fewer than twenty) number of employees." Under the terms of the SPG Agreement, all employees with adequate seniority have the right to bid to any SPG scheduled work on their seniority district.

Pursuant to the terms of Article XIII of the 1991 National Agreement, CSXT and BMW E arbitrated an SPG Agreement. The September 28, 1993 Arbitrated Agreement states that:

"System Production Gangs, hereinafter referred to as 'SPGs', may be established to perform production work throughout the CSXT System without regard to former property lines or seniority districts.

For the purposes of this agreement, production work that may be performed by a SPG, is confined to the following work activities: tie installation and surfacing, surfacing, and rail installation. This definition, however, does not limit the Carrier's right to utilize non-SPG gangs to perform these work activities nor does it limit the Carrier's right to propose and reach mutual agreement that other production work be performed by SPGs in the future."

Prior to accepting bids (applications) for the various SPG gang positions, the Carrier provides information to prospective SPG gang applicants regarding the pre-planned, tentative work schedule (work locations, dates, etc.) for the various SPG gangs. In April and May 1996, SPG 5XT1 was scheduled to perform tie replacement between MP Z184.0 and Z188.7 on the Clinchfield Seniority District. On April 10, 1996, in "preparation" for the tie replacement work, SPG 5XC3, which was also scheduled to work on the Clinchfield District during 1996, gauged track ahead of SPG 5XT1, the tie replacement gang.

On June 5, 1996, the Organization submitted a claim on behalf of the above named individuals contending that the Carrier had violated Rules 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 15, 22, 23, 25, 29 and 31 of the Agreement when SPG 5XC3 performed gauging work in lieu of local Clinchfield Railroad Maintenance of Way employees. In its September 9, 1996 appeal addressed to the Director Employee Relations the Organization asserted that:

"System Production Gang 5XC3 was utilized to gauge track at or near Spruce Pine, North Carolina, while their equipment was sitting idle at Ashland, Kentucky. Gauging track is not the type of production work this gang is programmed to work. Also, this was not an emergency condition."

The Carrier denied the claim, maintaining that:

"Gauging track of the magnitude involved here is not routine maintenance work normally performed by local forces working under the local Schedule Agreement; rather, work of this magnitude is covered by the provisions of the 1991 National Agreement and the arbitrated 1993 System Production Gang Agreement."

In its November 6, 1996 declination the Carrier went on to maintain that the gauging work in dispute was performed "in connection with and in support of" programmed maintenance work that was scheduled on the former Clinchfield. Therefore, because SPG 5XC3 was properly scheduled to perform work on the Clinchfield district, none of the Claimants who hold seniority on the Clinchfield District were denied any rights, according to the Carrier.

The record reveals that the gauging work performed by SPG 5XC3 was preliminary to and associated with the tie installation scheduled to be performed in that area by SPG 5XT1. Further, the record evidence lends credence to the Carrier's defense that the work in dispute was of greater magnitude than routine maintenance work.

A review of the SPG Agreement demonstrates that an annual process occurs to award the various positions available on the System Production Gangs. As part of that process, the Carrier identifies the seniority districts over which the SPGs are programmed to work. Thereafter, local forces with appropriate seniority have the right to apply for positions on the SPGs and perform any scope-covered work on their seniority districts. In that connection, although the Organization asserted that the Carrier did not advertise that SPG 5XC3 would be assigned to the territory involved herein, the Carrier provided documentation proving otherwise. Therefore, the Claimants had the opportunity to bid on the disputed work, and either chose not to avail themselves of the opportunity, or lacked sufficient seniority to secure a position on SPG 5XC3.

Finally, there is nothing in the Clinchfield Agreement or the SPG Agreement prohibiting the Carrier from utilizing SPG 5XC3 to gauge track ahead of SPG 5XT1. Local forces do not have superior rights over SPGs to perform programmed production work, and the work that is the subject of this claim was properly assigned to SPG forces to perform during their regular hours.

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 26th day of April, 2001.