

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35816
Docket No. MW-33165
01-3-96-3-589**

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

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

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- 1. The Agreement was violated when the Carrier assigned B&B Zone Gang forces (Heavy Bridge Gang) to perform district mechanic duties (installing awnings) at the Latrobe Train Station, Latrobe, Pennsylvania on January 16, 17, 18, 19, 23, 24, 25 and 26, 1995 and continuing and (installed entrance right of way gates) at Compit, Mile Post 308, Derry, RAD Interlocking on January 30, 31, February 1 and 2, 1995 and continuing, instead of assigning District B&B Mechanics J. McGrath, R. Cesarino, J. Guido, J. Bakos and B. E. McCurdy to perform said work (System Dockets MW-3883 and MW-3884).**
- 2. As a consequence of the violations referred to in Part (1) above, District B&B Mechanics J. McGrath, R. Cesarino, J. Guido, J. Bakos and B. E. McCurdy shall each be allowed ten (10) hours' pay per day at their respective straight time rates, plus all overtime worked by the B&B Zone Gang forces (Heavy Bridge Gang) beginning January 16, 1995 and continuing until the violations cease and they shall each receive credit for benefit and vacation purposes.”**

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.

On various dates in January and February 1995, the Carrier assigned zone gang forces on a B&B Heavy Bridge Gang to install awnings or entrance right-of-way gates at various locations within the Pittsburgh Seniority District. The Claimants are B&B Mechanics on the Pittsburgh Seniority District and claim the work. The geographical area of the Zone B&B Heavy Bridge Gang assigned to perform the work included the locations within the Pittsburgh Seniority District where the disputed work was performed.

The Organization has not carried its burden to demonstrate a violation of the Agreement. There is nothing in the Agreement cited by the Organization which precludes the Carrier from assigning this type of B&B work to zone as opposed to district gang forces in a situation, as here, where the zone gang's geographical area overlaps the district gang's geographical area. See e.g., Third Division Award 32326 between the parties where, in the opposite situation, the Organization filed claim because work was assigned to a district gang as opposed to an inter-regional gang. The Board denied the claim holding:

"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. . . .

* * *

. . . This Agreement contains no reservation of work concerning the laying of rail to Inter-regional gangs as opposed to Subdivision gangs. . . .

* * *

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. . . ."

That logic holds in this case. Here, the relevant Agreement language also does not support the work type assignment distinction urged by the Organization.

Third Division Award 30456 cited by the Organization does not change the result. That case which sustained a claim filed on behalf of division employees (Signalmen) for work assigned to system employees involved a different carrier and organization where the governing Rule specifically limited the work of system gangs ("System gangs will be confined to construction work on new installations, except for necessary maintenance changes in connection with a construction project, and in emergency cases such as derailments, floods, snow blockades, fires, and slides"). The dispute in that case was over whether there was an "emergency" allowing that the Carrier to assign work to system rather than divisional forces (an emergency was not found). In any event, the relevant consideration for our purposes is the existence of limiting language in that case concerning assignment of work to system forces, which the Organization has not shown exists between the parties in this case.

In light of the above, the question of whether the Claimants were qualified to perform welding work associated with the work assignments is moot.

The claim is denied.

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 14th day of November, 2001.