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**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36542
Docket No. MW-36159
03-3-00-3-355

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

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned forces assigned to Extra Gang 6602 to perform routine sectionman's work (deferred track maintenance and repair) at the Albina and Barnes Yards in Portland, Oregon beginning February 17 through March 11, 1999, instead of assigning said work to Oregon Division, Group 17 Track Subdepartment Sectionmen E. P. Karsch, M. Stover, T. M. Heiges and P. M. Valiejo (System File J-9913-51/1187974).
- (2) As a consequence of the violation referred to in Part (1) above, Claimants E. P. Karsch, M. Stover, T. M. Heiges and P. M. Valiejo shall now be compensated at their respective straight time rates of pay for eight (8) hours per day, five (5) days per week, plus all overtime at their respective time and one-half rates of pay, for all time expended by Extra Gang 6602 in the performance of the aforesaid work beginning February 17 through March 11, 1999.”

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.

Claimants E. P. Karsch, M. Stover, T. M. Heiges and P. M. Valiejo established and held seniority on the Oregon Division in the Track Subdepartment as Group 17 Sectionmen. During the claim period, the Claimants were furloughed or in the process of returning to work following a period of furlough.

The instant dispute arose when the Carrier allegedly used regularly assigned Extra Gang 6602 employees to perform deferred track maintenance and repairs at the Albina and Barnes Yards on Seattle Subdivision 860 of the Oregon Division at Portland, Oregon, instead of using the Claimants, Group 17 Sectionmen. According to the Organization, the work consisted of "perform(ing) minor track repairs, deferred maintenance and correction of FRA defects at the Albina and Barnes Yards." The Organization contends that such routine maintenance work "has customarily and traditionally been assigned to and performed by Group 17 Division Sectionmen. . . ."

In support of its position that the duties performed by section gangs differ from those of extra gangs on the Union Pacific Railroad, the Organization submitted 36 statements from Carrier Maintenance of Way craft employees. The Organization states that Rules 1, 4, 5, 9, 13, 35 and Appendix X of the Agreement govern the instant dispute because they provide that "Group 17 section laborers and Group 18 extra gang laborers have 'distinguishable duties and separate responsibilities,'" and that "the parties historically recognized the two (2) classes are not to be combined." Moreover, the Organization argues Appendix X specifies different pay rates for the two different groups.

The Organization adds that the Manager Engineering Resources, in his May 12, 1999 claim denial, essentially admitted that the disputed work accrued to the section gang, but then added that, by past practice, extra gangs have occasionally assisted section gangs with tie installation work. The Organization states that the Carrier failed to provide any evidence of such a practice in support of its affirmative defense (See Third Division Awards 29856, 30928, 31531 and 32500). However, the Organization avers that the 36 statements support the Organization's position that section gangs perform maintenance-type work while extra gangs are assigned to major project work.

As a result of the Carrier's alleged decision to replace the Claimants with the employees of Extra Gang 6602, the Organization maintains that the Claimants suffered a lost work opportunity. In its Submission, the Organization cites a plethora of Awards in support of its request for payment of the compensation detailed in paragraph (2) of the claim, as stated above.

The Carrier states that because the instant claim involves an intra-craft dispute between two groups of employees working in the same subdepartment, the Organization bears the burden of proving that the Claimants possessed exclusive rights to the disputed work. In support of this position, the Carrier cites a number of Awards, including Third Division Award 28597.

The Carrier argues that, on the claim dates, Extra Gang 6602 performed tie renewal work, not routine maintenance, and that both extra gang employees and section gang employees have historically performed this work. The Carrier relies on Rules 9 (u) and (w), which describe the duties of Sectionman and Track Laborer Extra Gang. The Carrier looks to Rule 13(c) for support of its position that, under certain circumstances, either extra gangs or section gangs may perform the work of laying rail (including tie renewal). Emphasizing that the Organization has not demonstrated that the work in dispute was exclusively reserved to the Claimants represented here, it urges that the Board deny this claim in its entirety.

Having examined the detailed arguments, exhibits and Awards submitted by both parties in support of their respective positions, the Board must determine whether the record sets forth the work Extra Gang 6602 actually performed, and whether the Claimants were entitled to it.

The Board examined the many exhibits submitted by both parties regarding the work performed by Extra Gang 6602. According to Local Chairman J. A. Hoyt, the work consisted of correcting FRA defects in Barnes Yard, changing FRA defective ties and performing maintenance on yard tracks in Albina, Barnes and Kenton yards. "Anything they came across that needed repairs they did it."

Attached to that letter are three copies of Union Pacific Track Inspection Reports relevant to the claim dates under review. The reports show the nature of the defects observed by the Track Inspector and the corrective actions taken. All the reports show that defects were coded as tie defects (code 109), and that on the claim dates Extra Gang 6602 undertook the corrective action of installing new ties (code 213).

In support of its position that the disputed work consisted of renewing ties, the Carrier's evidence in this regard is found in the Carrier's Labor Distribution Report for Gang No. 6602. These reports also indicate that Extra Gang 6002 performed tie renewal work (code 10005) during the claim period.

The Organization's statement that Extra Gang 6602 changed out ties, and the confirming Track Inspection Reports and Labor Distribution Reports indicate that Extra Gang 6602 performed tie renewal work on the claim dates. Indeed, the May 12, 1999 letter from the Manager Engineering Resources also conveys that the extra gang installed ties. The Board points out that while the Local Chairman's letter describes the disputed work as yard track maintenance or correcting FRA defects, the Organization provides no specific details regarding the maintenance or other duties allegedly performed by Extra Gang 6602, and that such work was exclusive to the Claimants. While the writers of the 36 statements describe duties they believe are typically performed by section employees and extra gang employees, they do not address the specific work performed on the claim dates. In fact, these general statements predate the instant claim dates by almost one year.

As stated innumerable times by many prior Awards, the Organization bears the burden of proving the merits of its case by presenting substantial evidence in support of its position. Moreover, many Third Division Awards have held that in cases such as this, where the employees of one group or subdepartment within a craft assert a superior right to that work over employees of another group or subdepartment within the same craft, that the Organization is faced with an even weightier burden. The Board agrees.

Regarding the question of whether the Claimants were entitled to the tie renewal work, Rules 9 and 13 read in pertinent part:

"RULE 9 - TRACK SUBDEPARTMENT

Construction and maintenance of roadway and track, such as rail laying, tie renewals, ballasting, surfacing and lining track, fabrication of track panels, maintaining and renewing frogs, switches, railroad crossing, etc., repairing existing right of way fences, construction of new fences up to one continuous mile, ordinary individual repair or replacement of signs, mowing and cleaning right of way, loading, unloading and handling of

track material and other work incidental thereto shall be performed by forces in the Track Subdepartment.

* * *

- (u) **SECTIONMAN.*** Employee assigned on section or track maintenance gangs to perform work which has customarily been recognized as Sectionman's work.

* * *

- (w) **SECTIONMAN TRUCK OPERATOR.** An employee assigned to operate section trucks and to perform work which has customarily been recognized as Sectionman Truck Operator's work. Must be competent to make running repairs and service, care and maintain the unit.

TRACK LABORER EXTRA GANG. Employees assigned on extra gangs engaged in new construction or work not customarily done by section gangs such as reballasting, rail relay, tie renewals, bank widening, grade and line changes, or emergency work occasioned by inclement weather, derailments, or other natural disasters."

* * *

"RULE 13 – USE AND ASSIGNMENT

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Section II – Track Subdepartment

- (a) **Positions on track maintenance gangs will be filled from the regular classifications of the Track Subdepartment from the ranks of sectionman and above and will be paid the applicable rate of the position as specified in the Schedule of Rates of Pay.**

- (b) Regular section forces assigned to the particular section where the work arises will be given preference over track maintenance gangs for overtime service.
- (c) Seasonal or temporary extra gangs engaged in work not customarily done by section gangs such as reballasting and rail laying including tie renewals in connection therewith, bank widening, grade and line changes, or emergency work occasioned by inclement weather will not be worked in the place of regular section gangs."

According to Rule 9, first paragraph, tie renewal work in connection with the construction and maintenance of roadway and track is work performed by Track Subdepartment forces. As stated in paragraphs (u) and (w), the classifications of Sectionman, Sectionman Truck Operator and Track Laborer Extra Gang are encompassed within the Track Subdepartment. Arguably, therefore, tie renewal work could be viewed as work that is not exclusive to either classification.

The second paragraph contained in Rule 9(w) seems to provide that new construction "or work not customarily done by section gangs" should be performed by extra gangs. Tie renewal work is included in a list of duties comprising "work not customarily done by section gangs." Rule 13(c) also seems to place tie renewal work within the purview of extra gangs, however, it also states that seasonal or temporary extra gangs "will not be worked in the place of regular section gangs."

From the above, it seems that the parties intended that regular section gangs should perform routine maintenance work while the extra gangs should undertake construction work and work not customarily done by section gangs. The Rules also provide that Sectionmen will perform work customarily recognized as Sectionman's work and that Extra Gang Laborers will perform work other than that customarily recognized as Sectionman's work. As stated above, the Board concludes that the facts and evidence in this record indicate that Extra Gang 6602 undertook the work of renewing ties, which, based on the Board's analysis of the cited Rules, is work that has been customarily performed by extra gangs. Inasmuch as the Organization did not prove that on the claim dates Extra Gang 6602 performed any work that was exclusive to Sectionmen, this claim must be denied. See similar Awards 11 and 12 of Public Law Board No. 6302 involving these same parties and factual situation.

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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 8th day of May 2003.