

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37850
Docket No. MW-36812
06-3-01-3-352**

The Third Division consisted of the regular members and in addition Referee Robert M. O'Brien when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(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 6083 to perform routine sectionman's work (deferred track maintenance and repair) on the Nampa Subdivision between CPP 242 and CPP 271 beginning on March 20, 2000 and continuing, instead of assigning said work to Idaho Division Track Subdepartment forces G. L. Purkey, J. Hernandez, R. T. Mills, J. J. Ugalde and R. D. Eck (System File J-0013-51/1234876).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants G. L. Purkey, J. Hernandez, R. T. Mills, J. J. Ugalde and R. D. Eck 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 6083 in the performance of the aforesaid work beginning on March 20, 2000 and continuing until such time as section forces are assigned this work."**

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.

Rule 1 is a general Scope Rule. It states that the Agreement governs employees in the Maintenance of Way and Structures Department listed in Rule 4. Rule 9 of the Agreement sets forth the work that is performed by the Track Subdepartment, such as rail laying, tie renewals, ballasting and so forth. Rule 9 identifies 24 positions in the Track Subdepartment that are governed by the Agreement, including Sectionmen and Track Laborer Extra Gang employees.

Rule 9(w) provides that employees assigned on section or track maintenance gangs will perform work that has been customarily recognized as Sectionman's work. The Rule does not define what work has been customarily recognized as Sectionman's work.

Rule 9(w) states that Track Laborer Extra Gang employees will be assigned 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.

On May 8, 2000, the Organization filed a claim on behalf of two Section Foremen and three Sectionmen who were regularly assigned to Section Gang 6131 and Section Gang 6132. Both gangs worked on the Nampa Subdivision. The Organization contends that the Carrier violated the Agreement when it assigned

work customarily and traditionally assigned to Sectionmen on the Nampa Subdivision to Extra Gang 6083.

The Organization identified the work in dispute as putting in switch ties, changing stock rails, changing switch points, removing old frogs and installing new ones, changing guard rails and insulated joint plugs, putting in cross ties, gauging, surfacing and lining, changing out rails and minor repairs. It submitted a written statement from one employee who claimed that Sectionmen have been doing this work since he hired out.

Extra Gang 6083 consisted of a Foreman, an Assistant Foreman, a Track Machine Operator, a Special Power Tool Machine Operator, a Truck Driver and three Laborers. According to the Carrier, this Extra Gang was assigned to replace switches and rail and to renew ties, work that has customarily been performed by Extra Gangs. The Carrier insists that Sectionmen have not customarily performed this work.

As noted heretofore, Rule 1, the governing Scope Rule, does not explicitly reserve work to any job classification. Therefore, as the moving party in this dispute, it is the Organization's burden to demonstrate that the switch replacement, tie renewal and tie removal work that was performed by Extra Gang 6083 was customarily performed by Sectionmen. The Organization has not sustained that burden.

The Organization's proof consists of a written statement from one employee who claimed that since he hired out, Sectionmen have installed switch points; changed ties and rail; stock rails, frogs, and guard rails. There is no question that Sectionmen have performed this work as part of ordinary track maintenance. However, the work in dispute did not involve ordinary track maintenance. Rather, it involved switch replacement, tie renewal, gauging, surfacing, and lining, among other track work. This is the type of work encompassed by Rule 9 (w). Therefore, the Carrier had the right to assign this work to Extra Gang 6083. Based on the evidence before us, the Board is not persuaded that Sectionmen have customarily performed this work. The claim must be denied as a result.

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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 1st day of August 2006.