

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41053
Docket No. MW-41159
11-3-NRAB-00003-090519**

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

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
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 failed to assign Nebraska Division Bridge and Building Subdepartment Group 3 employees to perform the work of removing/installing walkway, wooden guard rail, wood bridge ties and a wood deck on a bridge at Mile Post 5.59 on the Nebraska Division and instead assigned said work to Eastern District Group 1 Steel Erection employees on May 27, 2008 and continuing (System File J-0808U-251/1507689).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants D. Weigelt, S. Foster, D. Randolph, L. Armstrong, E. Bartlett and P. Stuart shall now each be compensated at their respective and applicable rates of pay for an equal and proportionate share of the total straight time and overtime man-hours expended by the Eastern District Group 1 Steel Erection employees in the performance of the aforesaid work beginning on May 27, 2008 and continuing.”**

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 claim involves the Carrier's alleged violation of the Agreement when it did not assign Nebraska Division Bridge and Building Subdepartment Group 3 employees to perform the work of removing/installing a walkway, a wooden guard rail, wood bridge ties and a wood deck on a bridge located at Mile Post 5.59 on the Nebraska Division, and instead, assigned the work in question to Eastern District Group 1 Steel Erection employees on May 27, 2008, and continuing until completion of the project.

It is the position of the Organization that the dispute is very simple, because the work in question is scope-covered Group 3 B&B Subdepartment work, i.e., it is not Group 1 Steel Erection work. It argued that the work of the character involved here is reserved to Carpenters pursuant to Rule 8 – Bridge and Building Subdepartment. The Organization further contends that Rules 4 and 17 establish that the B&B Group 3 Carpenter's class and the B&B Group 1 Steel Erection forces class, are entirely separate classes within the B&B Subdepartment. During the on-property handling of the claim, the Carrier challenged the Organization's accuracy with regard to whether Steel Gang No. 4908 began work on May 27 at Mile Post 5.59 with work reports indicating it was at Mile Post 177.77 between May 27 and 30, 2008. In response to the Carrier's argument that the claim was improperly amended, the Organization submitted other work reports and direct statements from witnesses. The Organization concluded by requesting that the claim be sustained as presented.

It is the Carrier's position that (1) there was no work performed on Bridge 5.59 on the Omaha Subdivision commencing May 27, 2008 (2) during the handling of the claim it was improperly amended (3) because the claim presented a jurisdictional dispute between employees of the same craft, the Organization carried a higher burden of proof, which it did not meet (4) the Agreement was complied with when the Carrier established a B&B position on Gang No. 4908 making the

gang a composite gang in accordance with Rule 13(a) and (5) the claim was excessive. It closed by asking that the claim remain denied.

The Board will first address the Carrier's assertion that the claim was improperly amended during its handling on the property. It argued that the startup date of the alleged violations set forth in the initial claim was subsequently amended in an effort to correct that error. The Board's close examination of the record indicates that the Organization did not amend the claim, but instead offered rebuttal argument and evidence to support its position. In its October 28, 2008 appeal letter, it stated that it is a common practice for the Carrier to charge time against one work order and/or location while its forces are actually at a different work location as a means of maximizing annual monetary budgets. In this vein, it proffered a statement (Grievance Form) from Claimant D. Weigelt wherein he stated that employees Foster, Peterson and Gantnier witnessed the violation occurring at Mile Post 5.59 in May 2008. An additional statement from Weigelt dated September 21, 2008, was forwarded to the Carrier with attached work records of Gang No. 4908 confirming that it was still working at the claimed location continuing in July and August 2008. The statements and work records furnished by the Organization did not amend the claim. The facts reveal, however, that the Carrier never effectively rebutted the General Chairman's statement regarding work order budgeting and, more importantly, Claimant Weigelt's multiple statements. The Board is not persuaded that the claim was improperly amended. Accordingly, the Board will resolve it on its merits.

The record reflects that there is a distinct difference between the responsibilities of the two competing B&B Groups involved in this dispute. The B&B Group 3 Carpenters have customarily and historically performed work encompassed by the Statement of Claim, On the other hand, the B&B Group 1 Steel Erection employees perform work as described in Section IV of Rule 8 such as the general erection and maintenance of steel in bridges, buildings, tanks and other structures. That distinction was recognized by the Carrier in its December 5, 2008 declination letter, wherein it stated:

“Carrier records indicate a Group 3 Carpenter was added to the Gang during the summer. Under Rule 13(a) composite gangs are permitted.”

Rule 13(a) states:

“The assignment of composite gangs consisting of one or two mechanics from any of the classifications in the Bridge and Building Subdepartment in Bridge and Building, Paint, and Steel Erection gangs working under the supervision of the respective foreman is permitted.”

The Carrier's statement above substantiated that a Carpenter needed to be part of Gang No. 4908 in order for it to be in compliance with the Agreement and the Organization did not contest the Carrier's position that composite gangs could perform the disputed work. Rule 13(a) further confirms that a composite gang can perform the disputed work. Additionally, the Carrier's statement that a Carpenter was added to Gang No. 4908 was not refuted by the Organization and, in fact, was substantiated by Claimant Weigelt's Grievance Form, which stated, in part:

“Had no carpenter on gang until arrived in Omaha, Ne. & Co. Bluff, Ia. Bid a Carpenter (trying to eliminate time claims).”

However, the record is unclear as to exactly when the Carpenter position was added to Gang No. 4908. In this regard, the Carrier merely stated that the position was added sometime during the summer, and the month of May is not a summer month. The Carrier's interpretation that Claimant Weigelt's statement proves that a Carpenter was part of Gang No. 4908 as of May 27 is not consistent with his entire statement, which also stated:

“Using improper gang consist. Not a Bridge Building Gang (Carpentry).”

The Board concludes that the Carrier violated the parties' Agreement until Gang No. 4908 became a composite gang. Regarding the remedy, the Carrier argued that the claim was excessive because it was filed for six Group 3 employees although Gang No. 4908 consisted of only three employees during a portion of the claim period. The Statement of Claim before the Board requests a proportionate share of the total hours worked by the Steel Erection employees. Therefore, the Board finds and holds that the six named Claimants should be compensated as requested on an equal basis for the number of hours (straight time and overtime) expended by the three man Gang No. 4908 until that gang was expanded to include

a Carpenter. Because the Board is unable to determine with certainty the number of hours expended by the Steel Erection employees until a Carpenter was added to the gang, we direct the parties to meet and review the Carrier's records so as to determine the appropriate number of hours owed in accordance with Part (2) of the claim. The Carrier's liability in this claim ceased on the first date a Carpenter worked on Gang No. 4908.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 23rd day of August 2011.