

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44064
Docket No. MW-43267
20-3-NRAB-00003-190575**

The Third Division consisted of the regular members and in addition Referee Paul S. Betts when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division
(IBT Rail Conference**

PARTIES TO DISPUTE: (

(Union Pacific Railroad Company (former Missouri Pacific)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier required the Claimants to report to a work area away from the designated reporting site of Gang 9711 on June 9, 10, 11, 12, 16, 17, 18, 19, 23, 24, 25, 26, 30, July 3, 7, 8, 9, 10, 14, 15, 16, 17, 21, 22, 23, 24, 28, 29, 30, 31, August 4, 5, 6 and 7, 2014 (System File UP648BT14/1611808 MPR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants C. Manns, P. Charters and T. Lorenz shall each be allowed ‘*** 980 miles per claimant per day for each day they were required to report at a location other than the designated reporting site of gang 9711, (the distance from Alma, Kansas to Villa Grove, IL and Latimer, Kansas to Villa Grove, IL) at the government rate of 56 cents per mile. This claim is also for sixteen (16) hours of travel time at the rate of one and one half (1 1/2) times per hour per claimant for each of the claim dates, for a total of five hundred seventy-six (576) hours at the rate of one and one half (1 1/2) times per hour each.’”**

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.

In the instant claim, the Organization alleges the Carrier violated Agreement Rules 3, 33, and 36(b)(3), when it split System Gang 9711 and directed the Claimants to perform work at a location other than their gang's designated reporting location.

In pertinent part, Rule 3 states:

"Rule 3. (a) The Carrier may establish such number of system gangs of the type listed below, as it deems necessary. Such gangs may work over the entire territory coming within the jurisdiction of this Collective Bargaining Agreement.

Steel Gang Work
Switch Gang Work
Tie and Ballast Gang Work
Surfacing and Lining Gang Work
Pick Up and Distribution Gang Work
Curve Gang Work
Welding/Glue Gang Work
Rail and Concrete Tie Gang Work
New Construction Gang Work
Brandt Power Unit
Tie Tracker Unloading Machine
BUC Undercutter
Ballast Vacuum Excavator
Crawler Hoe Excavator
Harsco G-043 Undercutter
Holland, Chemtron & Plasser welding machines
Crossing, gauging, pad replacement, clip and insulator replacement and out-of-face work...

- (c) It is understood the foreman is the highest-ranking employee on the system gang and all others report to him.
- (d) Positions established under this Rule will have assigned headquarters of "on line"..."

In pertinent part, Rule 33 states:

"Rule 33 – Worksite Reporting

Paid time for production crews, including supporting employees who are assigned to work with or as a part of a production crew, that work away from home will start and end at the reporting site designated by the appropriate supervisor by the end of the previous day, provided the reporting site is accessible by automobile and has adequate off highway parking. If a new highway site is more than fifteen (15) minutes travel time via the most direct highway route from the previous reporting site, paid time will begin after fifteen (15) minutes of travel time to the new reporting site from the Carrier-designated lodging site for it, and from the new reporting site to the Carrier-designated lodging site for it, on the first day only of such change in the reporting site.

Time paid under this Rule will not be included in determining compensation that may otherwise be due under the Award of Arbitration Board No. 298, or similar provisions.

Unpaid time spent traveling between the Carrier-designated lodging site and the work site is restricted to no more than thirty (30) minutes each way at the beginning and end of the work day."

In pertinent part, Rule 36(b)(3) states:

"Employees assigned to "on-line" service will have an assembly point of the designated work site where the day's work is scheduled to begin. When the employees are prevented from assembling at the work site to begin their tour of duty because of inadequate roads or parking for their personal vehicles, arrangements for a suitable assembly point located nearest the work site will be made for the beginning of the employees' tour of duty. At the close of shift each day, employees will be returned to their original assembly point. If the assembly point for "on-line" employees is

changed from one (1) workday to the next, the Carrier must designate the new assembly point no later than the close of shift the previous work day.

For the purpose of ensuring that traveling "on-line" employees are afforded an opportunity to secure adequate rest, it is agreed that the distance traveled between a former assembly point and a new assembly point during any 24-hour period will not normally exceed four hundred and fifty (450) miles. Likewise traveling "on-line" employees will not normally be expected to travel in excess of one hundred fifty (150) miles in moving from the former assembly point to the new assembly point during the unassigned hours between two consecutive work days.

Employees assigned to "on-line" service as provided in this section (b) or to outfit service as provided in section a above will be entitled to additional compensation in making moves from an old assembly point to a new assembly point by being provided a transportation allowance in accordance with the following scale:...."

In summary, the Organization argues a) the Carrier violated the Agreement when on various dates in June, July, and August 2014, it required the Claimants to report to work in Villa Grove, IL, despite the fact that the Claimants' assigned Gang had a designated reporting site in Kansas, b) the Carrier's contention that the Organization failed to bring forth proof of a violation is unsupported by the record, and c) the Carrier's contention that it properly assigned the Claimants to work somewhere other than their Gang's designated reporting location is unsupported by the record.

In summary, the Carrier argues a) the Carrier properly assigned a designated assembly point to the Claimants, b) the Carrier has a historical practice of splitting/separating gangs and assigning the employees of specific gangs to different assembly points, c) the Agreement does not limit the Carrier to just one assembly point per gang, d) the Organization has failed to meet its burden of proof, and e) the remedy sought by the Organization is improper and excessive.

After a thorough review of the record, the Board finds the Organization has failed to establish an Agreement violation prohibiting the Carrier from separating or splitting gangs in the manner presented here. Furthermore, unrefuted statements provided by the Carrier were indicative of a historical practice of separating or splitting gangs. Given the lack of an Agreement violation coupled with the historical practice of separating gangs, the Board must deny the claim.

Although the Board may not have repeated every item of documentary evidence, nor all the arguments presented, we have considered all the relevant evidence and arguments presented in rendering this Award.

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 11th day of August 2020.