

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 44296
Docket No. MW- 43603
20-3-NRAB-00003-200440

The Third Division consisted of the regular members and in addition Referee Kathryn A. VanDagens when award was rendered.

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

PARTIES TO DISPUTE: (

(BNSF Railway Company (Former Burlington Northern
(Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier abolished Mobile Maintenance Gang TMGX2058 effective on February 13, 2015 and failed and refused to compensate Messrs. Z. Stagman, J. Hansen and D. Byerson for the loss of production incentive bonus, straight time compensation and per diem pursuant to the provisions of Rule 7 and Appendix FF (System File C-15-A040-17/10-15-0132 BNR).
- (2) As a consequence of the violation referred to in Part (1) above, Claimants Z. Stagman, J. Hansen and D. Byerson shall each ‘... be paid their production incentive bonus of one thousand dollars (\$1,000.00), fourteen hundred (1400) straight time hours for the additional one hundred seventy five (175) days of work that the Claimants were entitled to, at their respective rates of pay, as well as, their per diem that they would have received for working the additional one hundred seventy five (175) days on Mobile Maintenance Gang TMGX2058, as settlement of this claim.’”

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.

The Claimants have established and hold seniority in the Maintenance of Way and Structures Department. By bulletin dated January 16, 2015, the Carrier established Gang TMGX2058 consisting of a foreman, sectionman, and truck driver. Effective February 9, 2015, the positions on Gang TMGX2058 were awarded to the Claimants.

On February 5, 2015, the Claimants were notified that the Gang TMGX2058 would be abolished at close of shift on February 13, 2015. Consequently, the mobile maintenance gang was not constituted and did not engage in operation for at least six months.

The Organization filed this claim which was appealed to the highest officer on-property. As the parties were unable to resolve the claim, it is now properly before this Board for final adjudication.

The Organization contends that Gang TMGX2058 was a mobile gang and, as such, the positions were required to last six months in accordance with Rule 7, Appendix U and Appendix FF of the Agreement. The Organization contends that the Carrier disbanded the gang before the regularly assigned employees could reach the six-month threshold. As such, the Organization contends that the Claimants were entitled to be compensated as provided in the Rules.

The Carrier contends that this issue was previously decided by Third Division Award 40385 in which this Board ruled that there is no requirement that gangs operate for six months. The Carrier contends that there is no reason to depart from this well-reasoned ruling.

The Carrier contends that the plain language of Rule 7 and Appendix FF clearly supports its contention that there is no prohibition from establishing District Mobile assignments that last less than six months. And because there is no such prohibition, the Organization's claim is baseless.

The Organization responds that Third Division Award No. 40385 is distinguishable because that award did not address the issue where the entire gang was abolished prior to working six months but instead concerned the addition of a single position to a gang that had less than six months of service left.

Rule 7, according to the Organization, governs this dispute. It reads, in part:

**“RULE 7. DISTRICT, REGIONAL AND SYSTEMWIDE GANGS
SECTION I. DISTRICT GANGS**

*** * ***

G. Each employee assigned to any district mobile gang who does not leave the gang voluntarily for a period of at least six (6) months shall be entitled to a lump sum payment annually equal to 5% of his/her compensation earned during the calendar year on that gang. Such compensation shall not exceed \$1,000 and shall be paid within 30 days of the completion of the employee's service on the gang; for mobile gangs not required to be disbanded each year, payment will be made within 30 days of the completion of each calendar year. If the company disbands the gang in less than six months, the company will be responsible for payment of the production incentive earned as of that date. This lump sum payment shall be made in accordance with Appendix FF. [Seniority Districts Consolidation Agreement 8/12/99, Section 5A]”

There is no dispute that the Carrier established Gang TMGX2058 as a Mobile Gang effective February 5, 2015 and abolished it effective February 13, 2015, clearly less than six months later. In accord with Rule 7, had the district mobile gang

continued for at least six months, those who stayed would have been entitled to an annual lump sum payment equal to 5% of compensation earned on that gang during the calendar year, up to \$1000.

The Carrier clearly disbanded this gang in less than six months, which had the effect of denying the gang members the incentive they would have earned. However, the parties also agreed that “If the company disbands the gang in less than six months, the company will be responsible for payment of the production incentive earned as of that date.”

The Carrier argues that Third Division Award 40385 relieves it from the responsibility of operating gangs for six months. However, in the case at bar, the entire gang was abolished shortly after it was created, but in the cited Award, an additional position had been added to the gang when less than six months remained on the gang’s assignment. The facts of Third Division Award 40385 are distinguishable from the facts here. We do not find that the precedent cited controls the outcome here. Nonetheless, we agree that the Agreement does not require the Carrier to maintain a mobile gang for six months. The parties’ agreement spells out what must happen if the Carrier disbands a mobile gang in less than six months, thereby recognizing the Carrier’s right to do so.

We find that the plain language of the parties’ Agreement governs this claim. The Carrier disbanded Gang TMGX2058 in less than six months. By the parties’ Agreement, the Claimants are entitled to the production incentive earned up to the date the gang was disbanded, or 5% of their earnings while assigned to Gang TMGX2058, up to \$1000. This portion of the requested remedy is granted.

However, the Claimants did not file a claim under the Work Force Stabilization Program (Appendix U) and the identified Rules do not authorize payment beyond the production incentive. As a result, the remainder of the claimed remedy is denied.

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 October 2020.