

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6302

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

UNION PACIFIC RAILROAD COMPANY

)
) Case No. 2
)
) Award No. 11
)

Martin H. Malin, Chairman & Neutral Member
D. D. Bartholomay, Employee Member
D. A. Ring, Carrier Member

Hearing Date: May 12, 2000

STATEMENT OF CLAIM:

1. The Agreement was violated when the Carrier assigned Extra Gang 4840 to perform track maintenance work within the designated boundaries of Section Seniority District 1117 at Council Bluffs and Omaha, Nebraska Yard on the Nebraska Division beginning April 11 through 26, 1994, instead of assigning Nebraska Division Track Subdepartment Group 17 sectionmen B. A. Morrissey, K. A. Fleeman, R. J. Blazek, L. H. Hans and S. Deasantiago (System file N-98/940423).
2. As a consequence of the violation referred to in Part (1) above, Nebraska Division Track Subdepartment Group 17 sectionmen B. A. Morrissey, K. A. Fleeman, R. J. Blazek, L. H. Hans and S. Deasantiago shall each ' . . . be allowed compensation equal to the amount they would have received absent the violation of the Agreement. Specifically, the referred to claimants must be allowed compensation at their respective group 17 straight time and overtime rates of pay for an equal proportionate share of the total man hours consumed by Employees on Gang 4840 in performing the referred to work that is customarily and traditionally assigned to Group 17 Sectionmen from April 11 through and including April 26, 1994.'

FINDINGS:

Public Law Board No. 6302, upon the whole record and all the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

The instant claim alleges that from April 11, 1994, through April 26, 1994, Extra Gang 4840 was performing routine maintenance work which, under the Agreement, should have been assigned to Group 17 sectionmen. Carrier responds that Extra Gang 4840 was not engaged in the performance of routine maintenance work and that, in any event, the duties of sectionmen and extra gang laborers overlap and the Agreement does not restrict Carrier's management right to assign work between them at will.

Rule 9(w) provides:

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.

On its face, Rule 9(w) defines extra gangs as employees performing work not customarily performed by sectionmen. Furthermore, Rule 9(u) provides:

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

The plain language of Rules 9(w) and 9(u) contradicts Carrier's argument that it may assign extra gang laborers and sectionmen to the same work at will. Rather, the Agreement provides for sectionmen to perform work customarily recognized as sectionman's work and for extra gang laborers to perform work other than work customarily recognized as sectionman's work.

We assume that the work customarily recognized as sectionman's work involves routine track maintenance and that, if extra gang laborers were assigned to routine track maintenance in other than emergencies provided for in Rule 9(w), it would violate the Agreement. The Organization had the burden to prove that extra gang laborers were in fact assigned to work customarily recognized as sectionman's work between April 11, 1994 and April 26, 1994. We find that the Organization failed to meet its burden of proof.

During handling on the property, Carrier introduced a statement from its manager track maintenance:

Gang 4840 was brought into Omaha for Work Order 13313 which involved replacement of ties in all long tracks including (long 5 and long 6). Removal and replacement of rail and shifting of track - No other work was done with this gang at these locations. . . .

The only evidence submitted by the Organization consisted of a statement from one Claimant:

They [Extra Gang 4840] were working on 24th Street in Omaha. There was 1 truck driver and 4 extra gang laborers. They hauled over 400 hundred ties from Council Bluffs, Ia and distributed them out to be put in on long 5 and 6 track in Omaha. They were putting tie in, replacing bad joint and other bad ties in the track. This has been done by Section and Maintenance gang for years. There was no new construction on the tracks or Retirement for the Extra gang to perform. The track was shifted under 24th Street for more room for C overpass column. All this work is regular section work. The work on this track consisted of installing ties, gauging track and lining track hauling in new ties and hauling out the old ones. This is ordinary track maintenance.

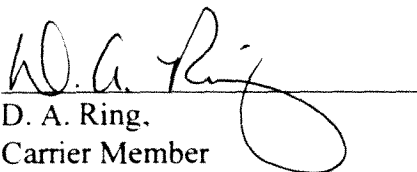
The most that can be said is that the record presented a conflict over whether, in fact, Extra Gang 4840 was engaged in work customarily performed by sectionmen. As an appellate body that reviews the record developed on the property, we are unable to resolve such factual disputes. In such circumstances, we have no choice other than to dismiss the claim.

AWARD

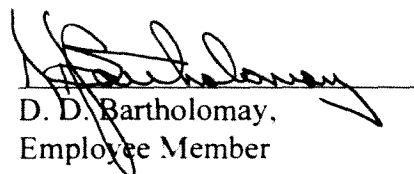
Claim dismissed.



Martin H. Malin, Chairman



D. A. Ring,
Carrier Member



D. D. Bartholomay,
Employee Member

Dated at Chicago, Illinois, July 18, 2000.