

**BEFORE
PUBLIC BOARD No. 7097**

**Award No. 1
Case No. 1**

BROTHERHOOD OF MAINTENANCE OF WAY)	
EMPLOYES)	
)
vs.)	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 assigned Division Gang 6081 employees to perform overtime service (work the rail pick-up train) between Mile Posts 121 and 124 on June 27, 28, 29 and 30, 2001, instead of regularly assigned System Gang 8507 employees J. Hunsaker, L. Skeet and A. Moraes (System File UP-01-11/1285519 and Carrier’s File 1286437).
- (2) As a consequence of the violation referred to in Part (1) above, Claimants Hunsaker and L. Skeet shall now receive forty (40) hours’ pay at their respective time and one-half rates and Claimant A. Moraes shall now receive thirty-six (36) hours’ pay at his respective time and one-half rate for the hours worked by Gang 6081 employees in the performance of the aforesaid work.”

OPINION OF THE BOARD:

This Board, upon the whole record and all of the evidence, finds and holds that the Employees and Carrier involved in this dispute are respectively Employees and Carrier within the meaning of the Railway Labor Act, as amended, and that the Board has jurisdiction over the dispute involved herein.

Claimants all hold seniority in their respective classes in the Maintenance of Way Department. At all times relevant, they were each regularly assigned to System Rail Pick-Up

Gang 8507. On June 27, 28, 29, 30, 2001, when Claimants were observing their regularly scheduled rest days, the Carrier assigned Idaho Division Gang 6081 employees to work the rail pick-up train between Mile Posts 121 and 124 on the Pocatello Subdivision. The Claimants were available and willing to perform the work involved had the Carrier elected to use them. Subsequently Mountain and Plains Federation General Chairman Morgan initiated a claim on behalf of Claimants Hunsaker and Skeet, while Pacific Federation General Chairman Ash initiated a claim on behalf of Claimant Moraes. These claims were consolidated for hearing, over the Carrier's continued objection.

The Organization contends that Claimants were entitled to be called in for overtime service under Rule 35, because the work is reserved to system gang employees by the Implementing Agreement between the UP and the WPRR, D&RGW, SPWL and C&NW Groups. To the Carrier's objection to the consolidation of the two claims, the Organization responds that two claims relate to the identical situation and violation, and that the history of mergers within the industry and the parties' agreements as to the use of system gangs, two employees affected by the same violation may have different General Chairman who represent them. On the merits, the Carrier asserts that the work in question was not exclusive to system gangs, so that the Carrier was within its managerial rights to assign the contested work to a division gang.


On the procedural objection, this Board is inclined to agree with the Organization that the consolidation of the two claims in this case was not inappropriate. Because of the nature and history of system gangs, employees on one system gang may be represented by different General Chairmen, and resort to different General Chairmen to respond to the same alleged violation. Although the two General Chairmen here phrased the claims slightly differently, the claims arose out of the same facts, and even considered together sought only a single recovery for each Claimant. Under the circumstances here, where the processing was coordinated, and the Carrier was not prejudiced by the Claimants' recourse to two different General Chairmen to advance their claims, the Board will not dismiss the claims due to the Organization's consolidation of the claims.


On the merits of the claims, however, the Board finds that the Organization has failed to prove that the System Gang had exclusive rights to the rail pick-up work and therefore failed to prove that the Carrier committed a violation by assigning the disputed work to a Division Gang on the System Gang's rest days. The Implementing Agreement does not reserve this work to system employees. According to this record, there has been a past practice of having the work done by both division and system gangs. The Organization has failed to identify any provisions that prevent the Carrier from assigning more than one shift

to perform non-exclusive work or to have the two different work groups cooperate on the same project. For this reason, the Claims are denied.

AWARD

Claim denied.


Lisa Salkovitz Kohn
Neutral Member


Carrier Member
Dated: June 6, 2008


Organization Member