

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6302

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

UNION PACIFIC RAILROAD COMPANY

)
) Case No. 12
)
) Award No. 12
)

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 in the Council Bluff, Iowa Yard on April 2, 1997 and continuing instead of assigning said work to the section forces assigned to maintain that territory (System file N-430/1069514).
2. As a consequence of the violation referred to in Part (1) above, Serctionmen C. M. Rhodes, D. C. Williams. T. E. Jarecki, S. T. Clark, R. E. Kyle, D. J. Ahl and P. L. Clark shall each be allowed pay at the appropriate rates of pay for an equal proportionate share of the total straight time and overtime hours expended by Extra Gang 4840 forces in performance of the work in question.

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 is comparable to the claim raised in Case No. 2, Award No. 11, but covers the period beginning April 2, 1997. As with Case No. 2, Award, No. 11, it is necessary to examine the evidence submitted on the property to resolve this claim. Carrier submitted a statement from its manager track maintenance attesting that Extra Gang 4840 worked on work order projects in east yard rehab in the Council Bluffs Yards. The Organization countered with numerous statements from employees.

The statements provided by the Organization consisted of several types. Many were

statements attesting to employees being instructed to charge their time to work orders for projects other than the work they were performing. Many others related that section gangs have customarily performed routine and day-to-day track maintenance work. Some statements protested the diversion of routine maintenance work from section gangs to extra gangs. Only two statements, however, both from the same individual, referred to work performed by Extra Gang 4840.


One such statement indicated that the gang primarily did work order projects but that it was not unusual for it to assist section forces in normal maintenance and in emergencies. The statement further related that work was charged to work orders that had funds remaining even though the work was not related to the work orders. It specifically identified work performed on May 13, 1998, gauging curves on the Council Bluffs Subdivision which was charged to a work order that had funds remaining. The second statement identified work performed June 2 - 16, 1998, gauging track that was charged to a work order for the replacement of other track.

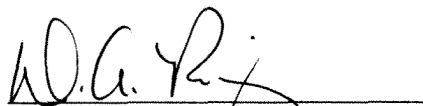
At most, the statements submitted by the Organization evidenced the following: Routine, day-to-day track maintenance was work customarily performed by sectionmen. Work order records were not a reliable indicator of the type of work actually performed. There was a significant perception by employees that sectionman work was being diverted to extra gangs. Some sectionman's work may have been diverted to Extra Gang 4840 in May or June 1998.


What is missing from the evidence presented by the Organization on the property is evidence of specific work customarily performed by sectionmen that was performed by Extra Gang 4840 in April 1997, the time period covered for which the claim was filed. Under these circumstances, we have no choice but to deny the claim for lack of proof.

AWARD

Claim denied.


Martin H. Malin, Chairman


D. A. Ring,
Carrier Member


D. D. Bartholomay,
Employee Member

Dated at Chicago, Illinois, July 18, 2000.