

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31292
Docket No. MW-31752
95-3-94-3-13

The Third Division consisted of the regular members and in addition Referee Robert L. Hicks when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Union Pacific Railroad Company (former
(Missouri Pacific Railroad Company)

STATEMENT OF CLAIM: "Claim of the System Committee of the
Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned employees from the Missouri-Kansas-Texas Railroad Company to perform undercutting work between the bowl and crest at the Centennial Yard beginning October 12, 1992 and continuing (Carrier's File 930105 MPR).
- (2) As a consequence of the violation referred to in Part (1) above, furloughed Red River Division and Texas District Tie Gang employees, M T Mueller, R L Gilyard, G. Bolyard, D.H. Slovak, D.A. Slovak, J.G. Milton and R.E. Minter shall each be allowed pay, at their appropriate rates of pay, for all time expended by the Missouri-Kansas-Texas Railroad Company employees in the performance of work accruing to Missouri Pacific Railroad Company forces during the period in question."

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 waived right of appearance at hearing thereon.

The Organization's claim is that the Carrier assigned three gangs (off the old Katy) who had no seniority rights on the "*** Red River Division and Texas District tie gang territory to perform work thereon. ***"

The Carrier never denied the above facts, but rather argues each Claimant was already working and thus was unavailable to do the work done by the Katy gangs and that there exists no basis for awarding monetary damages under these circumstances.

This alleged violation occurred on the old Missouri Pacific property. Overlooked by the Carrier are Third Division Awards 10125, 24576, 28852, 29205, 29313, 30076. Each involved the Organization and the Missouri Pacific Railroad Company either when it was a separate entity or after it had been taken over by Carrier. Each Award involved using employees across seniority district lines. Each claim was sustained either in total or in part, and the in part was in reference to the monetary portion.

In Third Division Award 10125, the Board awarded only straight time compensation to the Claimant's. In Award 24576, the Board awarded time and one-half payments, but excluded what was argued as duplicate payments. In Award 28852, although the claim was for straight time and overtime hours, the Board eliminated only what would have been duplicate claims. In Awards 29205 and 29313, Claimants were furloughed and each was kept whole, which included straight time and overtime pay. In Award 30076, two of the three Claimants were on duty and under pay yet their claims were sustained in full.

In this dispute there is no argument raised by the Carrier of duplicate payments, nor is there an argument raised on the property as to Carrier's right pursuant to Rule 6 to temporarily transfer employees across seniority district lines until the Submission to the Board, which is too late.

Under the circumstances described and argued on the property, the claim is sustained.

AWARD

Claim sustained.

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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 19th day of January 1996