

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 34049
Docket No. MW-32479
00-3-95-3-244

The Third Division consisted of the regular members and in addition Referee Robert M. O'Brien 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 KATY Gang 8740 to perform Maintenance of Way work (surface track and other routine track maintenance) on the Red River Division territory between Mile Posts 236.30 and 249.00 beginning February 14, 1994 and continuing (Carrier's File 940353 MPR).
- (2) The Agreement was violated when the Carrier assigned KATY Gang 8906 to perform Maintenance of Way work (unload ballast and other Company materials) on the Red River Division territory between Mile Posts 224.25 and 225.50, Segment 1050 at Grand prairie, Texas beginning February 14, 1994 and continuing (Carrier's File 940355).
- (3) The Agreement was violated when the Carrier assigned KATY Gang 8900 to perform Maintenance of Way work [install I-Bonds (prefab insulated joints)] on the Red River Division territory at Mile Post 215.0, Segment 1050 at Dallas, Texas on February 24 and 25, 1994 (Carrier's File 940354).
- (4) As a consequence of the violation referred to in Part (1) above, Red River Division Foreman B. Koci and Machine Operators M. Jones and G. Fontana shall each be compensated at their respective and

applicable rates of pay for all time expended by the KATY employees in the performance of the work in question.

- (5) As a consequence of the violation referred to in part (2) above, Red River Division employees J. Milton, D.E. Pierce, C. J. Sepulveda and G.A. Usher shall each be compensated at their respective and applicable rates of pay for all time expended by the KATY employees in the performance of the work in question.
- (6) As a consequence of the violation referred to in Part (3) above, Red River Division employees J. Milton, D.E. Pierce and C.J. Sepulveda shall each be compensated at their respective and applicable rates of pay for all time expended by the KATY employees in the performance of the work 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 were given due notice of hearing thereon.

The Organization filed three claims alleging that the Carrier violated the seniority rights of employees in the Track Subdepartment on the Red River Division when it allowed three different KATY gangs to perform Maintenance of Way work on the Red River Division.

In claim 940353, the Organization contends that KATY Gang 8740 performed surface track and other routine track maintenance between Mile Post 236.30 and Mile Post 249.00 beginning on February 14, 1994. The Organization intended this to be a

continuing claim as long as the KATY gang was performing work purportedly belonging to employees on the Red River Division.

The Carrier denied claim 940353 arguing that there was no continuing claim since any Maintenance of Way work that was allegedly performed by KATY Gangs occurred on specific dates. And in any event, KATY Gang 8740 did not perform any work on the Red River Division after March 7, 1994, according to the Carrier. The Carrier further argued that the named Claimants would not be entitled to any compensation even if there was a contractual violation since they were fully employed and did not suffer any monetary loss.

In claim 940355, the Organization averred that KATY Gang 8906 unloaded ballast and other material on the Red River Division territory between MP 224.25 and MP 225.50 at Grand Prairie Texas beginning February 14, 1994.

The Carrier denied the claim again arguing that there was no continuing claim involved since the KATY gang was on the property on February 24, 1994, only. Moreover, according to the Carrier, KATY Gang 8906 did not unload materials between MP 224.25 and MP 225.50 as the Organization claimed. And finally, the Carrier maintained that the Claimants were fully employed on February 24, 1994, and therefore lost no compensation.

In claim 940354, the Organization contended that KATY Gang 8900 installed I-Bonds (prefabricated insulated joints) on the Red River Division territory at MP215.0 in Dallas, Texas on February 24 and 25, 1995. The Carrier denied this claim insisting that it was a duplicate claim to claim 940355 and another claim that is not involved in this proceeding.

The three claims were discussed and treated separately on the property. However, without the Carrier's concurrence, the Organization combined them into one ex parte Submission that it filed with the Third Division of the National Railroad Adjustment Board. The Carrier objected to this course of action contending that the claims are dissimilar as are its defenses.

The Board looks askance at dissimilar claims being combined into one arbitration proceeding for obvious reasons. When claims involve separate work, different work locations and varying issues and defenses, the record should not be clouded by

combining them into one Submission. Nevertheless, the three claims before the Board in this proceeding are sufficiently similar that it was not improper for the Organization to combine them. However, we reserve the right to dismiss claims in the future that we consider factually and contractually dissimilar.

The Board agrees with the Organization that claims 940353 and 940354 involve continuing claims. Therefore, they could be filed at any time, but any monetary liability cannot extend more than 60 days prior to the date they were filed.

It is now firmly established on the territory comprising the erstwhile Missouri Pacific Railroad Company that Maintenance of Way employees on the Division where work of their craft is performed must be assigned this work. Therefore, if the Organization can demonstrate that KATY gangs performed Maintenance of Way work on the Red River Division on the claim dates then Maintenance of Way employees from the Red River Division are entitled to compensation for these lost work opportunities at their straight time rate of pay. The Carrier is not liable for duplicate claims, however.

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 25th day of May, 2000.