

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36993
Docket No. MW-36077
04-3-00-3-157

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn 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 failed and/or refused to provide senior Trackman J. Hawkins with accurate information concerning the location of Gang No. 4138 while the Claimant was attempting to exercise his seniority on November 4, 1998 (System File MW-99-77/1175658 MPR).
- (2) As a consequence of the aforesaid violation, Mr. J. Hawkins shall be compensated for “. . . four (4) hours at the claimant’s respective straight time rate of pay and mileage at the rate of \$.32.5 from Rosenberg, Texas to Englewood Yard, located at Houston, Texas account G.M.S. gave claimant incorrect information and made him perform unnecessary traveling and forced him to loose a days pay with regard to the exercising and protecting his seniority when making a displacement.”

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.

According to the Organization, on November 2, 1998, the Claimant, a Trackman, called the Carrier's G.M.S. office in Omaha, Nebraska, to exercise his seniority. Further, according to the Organization, the Claimant was specifically told by G.M.S. that he could bump an employee on Gang 4138 and that he should report to Rosenberg, Texas, on November 4, 1998. According to the Organization, the Claimant followed those instructions, but, upon his arrival at Rosenberg, he learned that the gang had moved on to Englewood Yard in Houston. This claim followed seeking to make the Claimant whole.

The Carrier disputes the Organization's factual assertions and argues that the gang was an on line gang and the Claimant should have known to contact the supervisor to find out the exact location of the gang.

According to the Claimant's statement:

"... on 11-2-98 called Omaha Nebr. to Mr. Pete Kauls to place a bump. I was told about online Gang 4138 I was to place a bump Wed 11-4-98 Mr. Kauls told me be in Rosenberg TX wed morning at 7:00 AM 11-4-98 I went to Rosenberg TX. was there wed morning at 6:40 AM. to go to work The Gang wasn't there. Signal Maintenance Jackson told me he would call the supervision Bobby Andrews so he Called and sup. Andrews said the Gang 4138 was in Houston Englewood Yard, but it was to late to drive from Rosenberg to Houston to Bump at 7:00 AM Starting time I went to Houston Thurs 11-5-98 and bump R. Mouzo but only was paid 4 hours for 11-4-98 which I want to Claim 4 hrs for 11-4-98 because I was sent to wrong Location. I think I should have Received 8 hrs."

What is crucial here is the factual statement from the Claimant dated December 2, 1998 and attached to the Organization's April 8, 1999 letter that he was specifically instructed by the Mr. Kauls to report to Rosenberg, Texas ("Mr Kauls told me be in Rosenberg TX wed morning at 7:00 AM 11-4-98.") While the Carrier disputes the accuracy of the Claimant's assertion, there is nothing from the maker of the instruction to the Claimant - i.e., from Mr. Kauls in the Carrier's G.M.S. office in Omaha - to refute the assertion that Kauls told him to report to Rosenberg, Texas, at 7:00 A.M. on November 4, 1998 to exercise his seniority. The Claimant's unrefuted assertion therefore stands as fact. See Third Division Award 28140:

"We agree this Board cannot resolve factual disputes. We do not agree we are faced with such a dispute here. Claimant's statement contains specific dates and detailed accounts of conversations he alleges he had with the clerk. Nowhere in the clerk's statement does he deny Claimant called him. In fact he states Claimant may have done so. Nowhere does he deny the statements attributed to him by the Claim statement as a denial of Claimant's version of their conversation. Rather we find it non-responsive to the allegations and do not view it as giving rise to testimonial or factual conflict."

Thus, the undisputed factual evidence shows that the Claimant followed the instructions given to him and reported to Rosenberg, Texas, on the specified date and time as directed, only to find that the instructions were given by the Carrier to report to a location where the gang was no longer present. The Claimant relied upon the information given to him by the Carrier. The Claimant should not be penalized because the Carrier gave him the wrong information. The Claimant shall therefore be made whole as requested in the claim.

AWARD

Claim sustained.

Form 1
Page 4

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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 18th day of May 2004.