

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25206
Docket Number MW-24757

Ida Klaus, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way **Employees**
(Denver and Rio **Grande** Western Railroad Company

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

(1) The Agreement was violated when the Carrier used section laborers from **Roadmaster's** Seniority District No. 2 to perform track **work** on **Roadmaster's** Seniority District No. 4 on February 3, 4, 5, 6 and 9, 1981 (System File D-9-81/MW-13-81).

(2) Furloughed Section Laborers B. C. Sanchez, T. Medina, T. L. Aguirre, Jr. and B. J. Bailey each be allowed forty (40) hours of pay at their respective rates because of the violation referred to in Part (1) **hereof.**"

OPINION OF BOARD: The Organization brings this claim **for** 40 hours **backpay** lost by each of four laborers in Seniority District No. 4 when the Carrier assigned **laborers** from Seniority District **No. 2** to perform **work** in **Roadmaster's** District No. 4. By making this assignment, the **Organization** argues, the Carrier violated Rule 6(c) of the Agreement, which provides, in **part**, "... all seniority rights of all employees shall be confined to the seniority district and subdepartment where employed." The Organization alleges that the four Claimants had all been furloughed and were available and qualified to work, but were not called for the assignment, as they should have been.

The Carrier **insists** that no Rules were violated. It argues that the work in question was not the exclusive province of Seniority District No. 4 employees because there was a past practice of allowing employees in other seniority districts to do that **work**. The Carrier also denies **that the** Claimants were available for work at that site. Finally, the Carrier raises two procedural arguments: that there was a material alteration of the claim and a failure to show that the Claimants were **"employees involved"** under Rule 29(a).

After review of the record and the cited cases, the **Board** concludes that the claim must be sustained. Rule 6(c) is a clear prohibition against **assigning** employees out of **their seniority** districts. The Carrier has offered no evidence of a contrary past practice which could alter that rule. Furthermore, it has been shown that **all four Claimants were** available for the work and that they complied with the rule for notifying the Carrier of their desire to be called. In the case of the fourth Claimant, B. C. Sanchez, his letter of December 29, 1980 merely stated that he would prefer to be recalled to Fort Garland, not that this preference was exclusive.

We find no evidence of a material modification of the claim.

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5 Accordingly, the claim must be sustained. Each of the four Claimants shall be compensated in accordance with item No. 2 of the Claim.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employes **involved** in this dispute are respectively Carrier and Employes **within** the meaning of the Railway Labor Act, as approved **June** 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and


That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 11th day of January 1985.