

The Third Division consisted of the regular members and in addition Referee Charlotte Gold 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 Midland Valley Section Gang No. 4119 instead of KO&G Seniority District employees to perform track maintenance work (gauging track) on the KO&G Seniority District from March 14 through 28, 1989 (Carrier's File 890586 MPR).

(2) As a consequence of the aforesaid violation, furloughed KO&G Seniority District employees D. G. Clifford, D. G. Patton, B. K. Acree, W. L. King, Jr. and L. J. Porter shall each be allowed eighty (80) hours of pay at their respective straight time rates, sixty-five (65) hours of pay at their respective time and one-half rates and eight (8) hours of holiday pay."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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.

Between March 14 and 28, 1989, Carrier assigned members of the Midland Valley Section Gang #4149 to perform track maintenance work on the KO & G Seniority District. The Organization alleges that five furloughed KO & G Trackmen should have been called in their stead.

This Board agrees with the Organization that the work in question (gauging) is work reserved to its Members and that, under Rule 2 of the Agreement, seniority rights are confined to assigned seniority districts. The Board also agrees that the assignment made here by Carrier was not a "transfer" of employees from one seniority district to another and, consequently, is not covered by Rule 6 (Transfer and Temporary Service) of the Agreement.

In defense of its action, Carrier argued that an emergency existed, requiring the use of Midland Valley forces. The Organization disputed this allegation on the property. This Board finds sufficient evidence in the record to support the contention that the situation was serious enough to cause Carrier to divert train traffic over the Oklahoma Subdivision (because of mishaps and track conditions).

But while the situation may have been sufficiently serious to cause Carrier to take immediate action with the forces it had on hand, this Board cannot conclude that these forces had to be used during a two-week period. KO & G Trackmen could have been called and could have been in place shortly thereafter.

There is some dispute as to the number of Trackmen used on the job and the hours worked. The Parties should review Carrier's records and determine whether two or five Trackmen were utilized and the amount that they were paid. Carrier shall pay the appropriate number of KO & G Trackmen the same amount it compensated Midland Valley Trackmen for the period between March 18 and 28, 1989.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 7th day of May 1992.