

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29381
Docket No. MW-29154
92-3-90-3-5

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employes
(Consolidated Rail Corporation

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

(1) The Agreement was violated when the Carrier assigned Youngstown Division employes from the Undercutter Support Gang instead of Pittsburgh Division employes to perform track maintenance work on the Pittsburgh Division from September 6, 1988 through September 29, 1988 (System Docket MW-181).

(2) As a consequence of the aforesaid violation, the Pittsburgh Division employes assigned to Gang SE 222 shall each be allowed pay at their respective rates for ten (10) hours a day beginning September 6, 1988 and continuing through September 29, 1988."

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.

In this dispute, which is but one of several docketed with this Division involving this Organization and Carrier on the same basic issue, employees from one seniority district were utilized for 16 days, ten hours each day, performing work on an adjoining district because of insufficient personnel in the district where the work was required. Prior to utilization of employees to work on the short handed district, Carrier sought the assistance of an Organization Local Chairman in locating furloughed employees in the district so that they may have been recalled for the work. These efforts were without success. Carrier contends that its actions deprived no one of work, as each Claimant was on duty and under pay. It maintains that the situation in this case is, thus, analogous to a similar dispute resolved in

Third Division Award 28889, involving the same parties, the same Rules, and a like situation. In that Award, the Board found a violation of the Agreement occurred but, declined to require any monetary payments as there was no proven cognizable loss causally traceable to the violation of the Agreement.

The Organization argues that Award 28889 erred when it failed to require monetary payments and insists that it is out of step with prior holdings of this Board, some of which involved the very same parties. It filed a lengthy Dissent to Award 28889, pointing out the mistakes it perceived were in the decision. It stressed in the Dissent and here, that the better reasoned decisions of this Board require monetary payments when employees from one seniority district are used on a different seniority district, thus depriving employees of the seniority district on which the work was performed of valuable work opportunities.

Notwithstanding the conclusions reached in Award 28889, this Board notes that a number of Awards of this Board and Special Boards of Adjustment which have required monetary payments in established cases where employees of one seniority district were used to perform work in a different seniority district. The rationale behind these decisions is that bringing employees from one district to work in another district deprives employees with seniority rights in the district where the work is performed of contractually secured work opportunities. If the Carrier is permitted to move employees from one district to another, without payment to the employees deprived of the work opportunity, the seniority provisions, mutually developed by the parties and written into their Agreement, is vitiated.

While there are a number of citations, involving this Carrier and this Organization, which could be referenced on these points, one seems particularly appropriate. In Award 41, SBA No. 1016, the Board held that:

"Important seniority rights are in question in this case, because an employee whose name is on a seniority roster in an Agreement designated seniority district owns a vested right to perform work in that district that accrues to his standing and status on the district seniority roster. The Seniority District boundaries established by the parties' Agreement to protect and enforce that right, have been improperly crossed by Carrier action, resulting in the Claimants loss of work opportunities, and hence the principle that compensation is warranted in order to preserve and protect the integrity of the Agreement, is applicable to this dispute. For similar rulings between these same parties see Award No. 34 of Special Board of Adjustment No. 1016 (07-28-89) and Award No. 7 of Public Law Board No. 3781 (02-12-86)."

Accordingly, in the circumstances of this case, the Board must conclude that Award 41, SBA No. 1016 is better reasoned than the decision in Award 28889. Award 28889 cannot be accepted as authoritative precedent. Award 41 details the correct application of the Agreement and the requirement that payments must be made to Claimants who lost work opportunities when Carrier utilized employees from a different seniority district for the performance of work on their district. The Claim will be sustained.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 17th day of September 1992.