

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 29985
Docket No. MW-28976
93-3-89-3-395

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Southern Pacific Transportation Company
((Eastern Lines)

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

- (1) The Carrier violated the Agreement when it assigned Houston Division B&B employes instead of San Antonio Division B&B employes to perform bridge work (replaced bridge ties and stringers) between Columbus and Flatonia, Texas on the San Antonio Division from August 15 through September 30, 1988 (System File MW-88-191/476-30-A).
- (2) As a consequence of the aforesaid violation, San Antonio Division B&B Foreman F. Rodriguez, Assistant Foreman D. E. Johnson, Carpenters M. F. Guajardo, A. S. Tucker and L. N. Ward shall each be allowed two hundred eighty (280) hours of pay at their respective straight time rates."

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 employe 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.

The Claimants have seniority on the Carrier's San Antonio Division and were assigned to B&B positions.

The Organization filed a Claim alleging that the Carrier violated the Agreement when it assigned a Houston Division gang to

replace bridge ties and stringers on a bridge between Columbus and Flaton, Texas on the San Antonio Division. The Organization contends that the Claimants have historically performed bridge maintenance, repair, and construction work and were fully qualified to perform the work beginning August 15 through September 30, 1988. The Organization seeks compensation for the Claimants for 280 hours of pay, time equivalent to the total hours worked by the Houston gang.

The Board has reviewed the record in this case and we find that the Organization has met its burden of proof that the Carrier violated the Agreement by assigning the Houston B&B employees to perform the bridge work involved here instead of the San Antonio Division B&B employees. The Organization has clearly demonstrated that the Carrier disregarded the Claimant's seniority rights in violation of the seniority district Rules that prohibit work from being removed from the confines of one seniority district and placed in another. The Carrier has not shown that there was any emergency situation that required it to violate the Rules.

With respect to the Carrier's argument that the Claimants were fully employed during the alleged violation period, the Carrier has failed to show that it could not have assigned the Claimants to perform the work in question by either rescheduling the work the Claimants actually performed or by allowing the Claimants to perform the work in question during overtime or weekend periods. In a situation like this, the Carrier bears the burden of showing that the Claimants were fully employed and could not possibly have performed the work in question. It has not done so.

For all of the above reasons, the claim must be sustained.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 17th day of December 1993.