

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30409
Docket No. MW-29758
94-3-91-3-122

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr., 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 Eastern Division surfacing gang employees D. G. Neuner, M. K. Schlesselman and C. A. Clinton instead of Kansas City Terminal employees to perform surface correction work in the Kansas City Terminal on November 16, 20, 21, 22, 27, 28, and 29, 1989 (Carrier's File 900205 MPR).
- (2) As a consequence of the aforesaid violation, Kansas City Terminal Foreman T. Crumpton, Machine Operators J. E. Everette and J. A. Lechner shall be allowed eight (8) hours each at their respective straight time rates and any overtime worked by the Eastern Division employees on the aforementioned dates."

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 waived right of appearance at hearing thereon.

This Claim is virtually identical to that reviewed in Third Division Award 30408 in that it concerns work performed in the Kansas City Terminal seniority district by employees not holding seniority status therein. The difference relates to the dates and Claimants involved.

This Claim is distinguished from the predecessor case in that, during the claim handling procedure, the Carrier asserted as follows:

"The claimants were given the opportunity to perform the work on several occasions, but were unable to perform the work satisfactorily. After several attempts by the claimants to perform the work it was decided that the surfacing gang would perform the work."

In response, the Organization stated:

"It should also be noted that [one of the Claimants] has been performing this very type of work for over seven (7) years and no one has accused him of performing unsatisfactory work."

On the basis of these conflicting assertions, the Board lacks sufficient information to decide the matter on whether or not employees in the Kansas City Terminal seniority district were qualified to perform the work. As a result, the Findings, as in the Third Division Award 30408, remain applicable here.

AWARD

Claim sustained in accordance with the Findings.

O R D E R

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.

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By Order of Third Division

Dated at Chicago, Illinois, this 8th day of August 1994.