

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31228
Docket No. MW-30875
95-3-92-3-709

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
(
(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 forces of System Bridge Gang (South) 9330 to perform routine maintenance to Bridge 370.7 in the vicinity of Benton, Arkansas from June 4 through 15, 1991 and beginning July 16, 1991 and continuing, and on Bridge 596.5 in the vicinity of Alexandria, Louisiana from June 18 through July 5, 1991 (Carrier's File 910682 MPR).
- (2) As a consequence of the violation referred to in Part (1) above, the forces assigned to System Bridge Gang (North) 9331 listed below* shall each be compensated , at their respective time and one-half rates of pay, for an equal proportionate share of the total number of man-hours expended by forces of the System Bridge Gang (South) 9330.

* J. A. Gower	Foreman
W. D. Foster	Asst. Foreman
J. S. Eaton	Bridgeman
W. D. Pitman	Bridgeman
V. R. Burpo	Bridge Welder
J. J. Ramey	Bridge Welder"

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.

From June 4 through 15, 1991 and from July 16, 1991 through August 6, 1991, the Carrier assigned forces of System Bridge Gang (South) 9330 to perform maintenance work on Bridge 370.7 near Benton, Arkansas and on June 18 continuing through July 5, 1991, System Bridge Gang (South) 9330 performed maintenance work on Bridge 596.5 near Alexandria, Louisiana.

The Organization filed the instant claim on behalf of members of the System Bridge Gang (North) 9331. The Organization argued that the "routine maintenance work" at issue should have been assigned to Gang 9331 and not Gang 9330 which holds no seniority on the System Bridge Gang North Seniority District.

The Carrier denied the claim contending that the North Gang was working on a major rehabilitation project on the Memphis Subdivision that would last until the end of 1992. Instead of pulling the North Gang off their project, the South Gang was brought across seniority boundaries to perform "pressing" bridge repair work near Benton, Arkansas. As for the work performed near Alexandria, Arkansas, the Carrier contended that that work was of an emergency nature when heavy rains caused flooding and washouts. In addition, the Carrier contended that the work performed near Alexandria was at the "... southernmost point on the 'North' seniority territory."

This Board has reviewed the record in this case and we find that the Organization has presented sufficient evidence to support its claim that the Carrier violated the Agreement when it assigned the wrong forces to perform the work during the period in question. There is absolutely no evidence of any emergency in this record which might justify the Carrier's actions in this case. Furthermore, there is no dispute that the work involved was performed on the Claimants' seniority district by employees who held no seniority in this district. This was not a temporary transfer situation.

With respect to the remedy, the fact that there may have been full employment is not a bar to monetary remedy in these types of cases. See Third Division Awards 30408, 30409, 30283, and 30076.

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

AWARD

Claim sustained.

ORDER

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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 1st day of November 1995.