

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31233
Docket No. MW-30739
95-3-92-3-537

The Third Division consisted of the regular members and in addition Referee Margo R. Newman, 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 Supervisor Dave Angel to perform rail train operations on December 6 through 11, 1990 at Cozad, Nebraska and Fort Worth, Texas and when it assigned Supervisor Mike Erickson to perform rail train operations on December 18 and 19, 1990 at Vanita, Oklahoma and Denison, Texas (Carrier's File 910299 MPR).
- (2) As a consequence of the violations referred to in Part (1) above, Work Equipment Mechanic H. A. Cloyes shall be allowed forty (40) hours' pay at his straight time rate, sixty (60) hours' pay at his overtime rate and sixteen (16) hours' pay at his double time rate of 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 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 involves the Carrier's assignment of two supervisors to perform loading and unloading of rail on two different work trains, rather than utilizing the named Claimant, an Eastern Seniority District Work Equipment Mechanic, otherwise known as a "roughrider". The evidence establishes that Rail Train JTN32J40 picked up rail at Cozad, Nebraska, part of the former Union Pacific Railroad, and unloaded rail at Fort Worth, Texas, part of the former Missouri Pacific Railroad, between December 6 and 11, 1990. Similarly, Rail Train JTN54C50 picked up rail at Vanita, Oklahoma, and unloaded rail at Denison, Texas, both locations being part of the former Missouri Kansas Texas Railroad, on December 18 and 19, 1990. There is no dispute that Claimant was fully employed as a Work Equipment Mechanic on the claim dates, and that such classification normally performs the work of riding rail trains, loading and unloading welded and bolted rail, maintaining and repairing trains (including preventive maintenance), and instructing others how to perform these tasks safely.

The issue of whether the Claimant is entitled to perform the roughrider work in dispute is governed by the findings of Public Law Board No. 5557, Award 1. In that case, the Public Law Board held that former Missouri Pacific Eastern District Work Equipment Mechanics have no contractual jurisdiction to perform roughrider work on former Union Pacific or other railway lines, but, based upon a controlling past practice established by the parties, are entitled to perform roughrider work over the entire system of the former Missouri Pacific Railroad. While the Public Law Board noted that this right was not exclusive to the Work Equipment Mechanics, it held that the Carrier violated the Agreement by utilizing supervisory rather than other authorized, qualified employees to perform the roughrider work. Thus, the claim relating to the December 18 and 19 work of train JTN54C50 is denied, based upon the fact that the roughrider work at issue there was not performed on former Missouri Pacific lines. The claim relating to the December 6 through 11 work of train JTN32J40 is sustained as to the actual time spent unloading at Ft. Worth, Texas, but is denied with respect to the work performed at Cozad, Nebraska, which is former Union Pacific territory.

With respect to the appropriate remedy, the decision in Public Law Board No. 5557, Award 1, is also determinative. There it was held that, based upon Third Division precedent for Scope Rule violations where a supervisor performs the disputed work, a monetary remedy would be appropriate for violations on the former Missouri Pacific lines, despite the fact that Claimant was fully employed, but further held that under these circumstances, the monetary remedy should be limited to payment at the straight time rate. The Public Law Board made clear that a monetary award would include the actual time expended in loading or unloading of rail or any other Scope Rule work performed by the supervisor on the appropriate claim dates, exclusive of transport time.

Therefore, the Claimant shall receive compensation at his straight time hourly rate of pay for the actual time spent by Supervisor Dave Angel unloading rail at Fort Worth, Texas between December 6 and 11, 1990.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that 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.