

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Form 1

Award No. 31566
Docket No. MW-31211
96-3-93-3-130

The Third Division consisted of the regular members and in addition Referee Robert Richter when award was rendered.

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

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

(1) The Agreement was violated when on January 6 through 29, 1992, the Carrier assigned Southern Pacific Western Lines employee J. Hinijoias to work on the Eastern Lines Seniority District performing foreman's duties on the T&L Lines from El Paso Yard to Belen, Texas instead of assigning Southern Pacific Eastern Lines employee J. D. Temple to perform the work (System File MW-92-69/MW 92-30 SPE).

(2) As a consequence of the violation referred to in Part (1) above, Southern Pacific Eastern Lines Foreman J. D. Temple shall be allowed one hundred forty-four (144) hours' pay at his respective straight time rate and thirty-six (36) hours' pay at his time and one-half rate."

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.

The Organization filed this claim on the basis an employee was improperly assigned work belonging to the Claimant. The Claimant who was working as a foreman at the time the work was performed by a laborer with Eastern Line seniority. The Claimant has Western Line seniority.

The Organization argues that the Eastern Line laborer performed foreman's duties by obtaining track time for a rail grinder being operated by a contractor. It further argues that the yard limits established and Article 31 of the Agreement had been changed to Mile Post 822.5. Article 31 reads as follows:

"ARTICLE 31

EL PASO YARDS

SECTION 1 - All main, yard and industry tracks of Southern Pacific Transportation Company (Western Lines) and the Southern Pacific Transportation Company (Eastern Lines) within the present yard limits of the El Paso Terminal will, for the purpose of this agreement, hereinafter be referred to as 'terminal trackage'.

SECTION 2 - The present yard limit signs are located as follows:

**Mile Post 1291.54 - North Line (To Tucson)
Mile Post 1319.82 - South Line (To Douglas)
Mile Post 1300.54 - (Line to Tucumcari)
Mile Post 820.00 - (Line to Sanderson)**

SECTION 3 - With 'terminal limits' as set forth above, track maintenance will be performed by 'terminal gangs' which shall consist of employees of both Western and Eastern Lines seniority, based on a work force as close as possible to a ration of 60% Eastern and 40% Western Lines employees within a class. There shall be not less than three track foremen's positions, two of which will be from the Eastern Lines seniority roster, and one from the Western Lines seniority roster. 'Terminal Gangs' may be used independently of each other, or in any combination, including all gangs working together on the same project, and may perform work on any track within the terminal limits. General Chairmen Western Lines

and Eastern Lines will each be furnished quarterly report of number of men assigned to 'terminal gangs' as to Western and Eastern Lines and 60%-40% ratio will be adjusted if necessary for the next quarterly period.

SECTION 4 - Employees in 'terminal gangs' shall continue to be subject to the working agreement in effect on their own seniority district and shall not be established seniority on the other seniority district except, with approval of the Company, by their relinquishing their former seniority and establishing seniority as a new employee on the other district. New employees hired to work in 'terminal gangs' shall establish seniority only on the seniority district on which the vacancy existed under the percentage provisions of this agreement. Except as provided in Paragraph 5 below, employees assigned to 'terminal gangs' shall receive the same rates of pay for the same class of service which shall be the greater of the rates provided under the two separate agreements for that class of service.

To support its position the Organization submitted pages 52 and 53 of the Operating Time Table. Rule 93 on page 53 reads as follows:

"RULE 93. Location of yard limits:

El Paso.820.0"

The Organization has the burden to prove the Agreement has been violated. In this case it has failed to show that receiving track time is work belonging exclusively to foremen, and that, if it did, the Claimant was the foreman to be used in light of the fact he was already working as a foreman. The Organization also failed to show its facts were correct. Organization evidence proves the Carrier was correct when it argued all of the work was properly assigned to a Western Division employee.

The Agreement was not violated.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 25th day of July 1996.