

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31719
Docket No. MW-31151
96-3-93-3-171**

The Third Division consisted of the regular members and in addition Referee Martin H. Malin 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 Arkansas Division Surfacing Gang 1035 to perform routine surfacing work on the old White River Division Seniority District territory on January 3 through 24, 1992, instead of assigning Foreman R. R. Ply and Machine Operators R. L. Swan and J. D. Kelley, who hold prior rights on the White River Division Seniority District territory (Carrier's File No. 920246 MPR).

2. As a consequence of the violation referred to in Part (1) above, the Claimants shall each receive pay, at their respective time and one-half rates, for an equal proportionate share of the total number of man-hours expended by Arkansas Division Gang 1035 in the performance of the work on the White River Division Seniority District territory beginning January 3 through January 24, 1992.”

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all of 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 were given due notice of hearing thereon.

On December 10, 1982, the parties signed a Memorandum Agreement effective January 1, 1983. The Agreement eliminated the White River Seniority District. A portion of the District was merged into the Arkansas Seniority District and the remainder was merged into the Joplin Seniority District. Employees in the White River Seniority District were dovetailed into the seniority lists of the Arkansas or Joplin Districts, depending on where they were headquartered. The Agreement further provided:

"Employees holding seniority of the District immediately prior to the effective date of this Agreement will retain prior rights to all positions working on the territory presently comprising the District irrespective of whether these positions are located on the Arkansas or Joplin Seniority Districts. It further is understood that so long as an employee retains these prior rights, he cannot be displaced from positions on the territory comprising the District by Arkansas, Eastern District, or Joplin Seniority District employees. He also cannot be compelled to work outside the territory comprising the District without the payment of actual necessary expenses."

From January 3, through January 24, 1992, Carrier assigned employees from Arkansas Division Surfacing Gang 1035 to perform work located in that portion of the Arkansas Division which had previously been part of the White River Seniority District. The Organization maintains that this assignment violated Claimants' prior rights under the Memorandum Agreement.

Carrier denies that any violation occurred. In Carrier's view, it properly used employees holding seniority in the Arkansas Division to perform work in the Arkansas Division. Carrier contends that the Memorandum Agreement gave employees who held seniority in the White River District protection against displacement from positions in the former White River District and prior rights to jobs bulletined, but not an exclusive right to perform all work in the former White River District.

After careful consideration, the Board agrees with Carrier that no violation occurred. The prior rights referred to in the Memorandum Agreement were the seniority rights that the employees had enjoyed on the former White River District. There is no indication that the Agreement provided for exclusivity and precluded Arkansas Division employees from performing any work in the portion of the expanded Arkansas Division that was located previously in the White River District. Claimants were not displaced and there is no indication that their prior seniority rights were infringed in any other way.

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 September 1996.