

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32584
Docket No. MW-31231
98-3-93-3-315

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Union Pacific Railroad Company (former Missouri
(Pacific Railroad)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Carrier's actions of: (a) moving the two positions (lead welder and welder helper) assigned to Welding Gang 1154 from their headquarters at Malvern, Arkansas to Benton, Arkansas effective January 8, 1992, (b) establishing Welding Gang 1171 with a welder and welder helper position headquartered at Malvern, Arkansas effective March 20, 1992, (c) abolishing Welding Gang 1154, (d) failing to assign a lead welder position instead of a welder position to said gang and (e) not allowing expenses in connection with Award 298, was in violation of the Agreement (Carrier's File 920348 MPR).
- (2) As a consequence of the violation referred to in Part (1) above, Messrs. C. L. Bohanon and G. E. Vincent shall be allowed expenses as mandated by Award 298 and Claimant Bohanon shall be compensated at the lead welder's rate of pay beginning March 20, 1992 and continuing until such time as Gang 1154 is returned and headquartered at Benton, Arkansas and the lead welder position is reestablished."

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 were given due notice of hearing thereon.

Prior to January 3, 1992, Welding Gang 1154, consisting of a Welder and a Helper, was headquartered at Malvern, Arkansas. On that date Welder Holloman and Helper Pelton were notified that their jobs were abolished, effective January 8, 1992. On January 10, 1992, Carrier advertised a vacancy for a Welder and a Helper on Welding Gang 1154, headquartered at Benton, Arkansas. Holloman and Pelton were the successful bidders and were assigned to the positions, effective January 24, 1992. On March 23, 1992, Holloman and Pelton received notices that their positions of Welder and Helper on Welding Gang 1154 headquartered at Benton would be abolished effective March 27, 1992. At the same time these abolishments were occurring, Carrier advertised for positions of Welder and Helper for Welding Gang 1171, to be headquartered at Malvern. Under date of March 20, 1992, Welder Bohanon and Helper Vincent were assigned to Gang 1171.

The Organization argues that change in the headquarters of Welding Gang 1154, its abolishment on March 27, 1992, and the bulletining of Welding Gang 1171 at the former headquarters' point of Gang 1154, was done for the purpose of avoiding payment of away from home expenses as required by Award 298. The Organization says that Award 298 set the guidelines for forces such as those assigned to Welding Gangs, and these were incorporated into Rule 26 of the Agreement. Under these guidelines Carrier is foreclosed from establishing a fixed headquartered gang to perform work at one location for a short period of time, abolish said gang, and then reestablish the gang at its former location within the time period of one year. This is exactly what occurred, it is argued.

The Board agrees with the Organization. It is obvious from review of the bulletins in evidence in this record that a number of transactions occurred that accomplished the very thing Award 298 proscribed, move a fixed headquartered gang from one headquartered point to another for a brief period of time to circumvent a

requirement to pay away from home expenses. The claim will be sustained, however, Carrier's liability for Award 298 expenses and Lead Welder's rate of pay for Claimant Bohanon will cease 12 months after the date Gang 1154 was first moved to Benton, January 24, 1992.

AWARD

Claim sustained in accordance with the Findings.

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 22nd day of May 1998.

CARRIER MEMBERS DISSENT
TO
THIRD DIVISION AWARD 32584, DOCKET 31231
(Referee Fletcher)

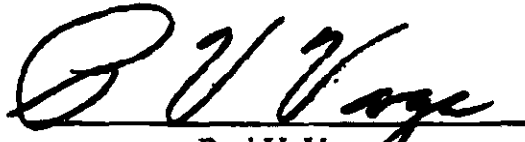
In this Award the Referee was apparently misled when he found "It is obvious from review of the bulletins in evidence in this record that a number of transactions occurred that accomplished the very thing Award 298 proscribed, move a fixed headquartered gang from one headquartered point to another for a brief period of time to circumvent a requirement to pay away from home expenses." The bulletins simply do not reveal this to be such. If it was such an obvious ploy, as the Organization asserts, then the bulletins and abolishment would have been closer together. Assertion by the Organization does not lead to fact.

Secondly, the Referee erred in the determination the Carrier was required to establish a Lead Welder position. Not only did Referee Van Wart in Special Board of Adjustment 279 Award No. 429, cited in Carrier's submission, find that the Carrier was not required to bulletin a Lead Welder with a Welder Helper but Referee Meyers found likewise in Third Division Award No. 29975.

Therefore, it is clear that this Award, which failed to follow precedent, has no precedential effect.


Martin W. Fingerhut


Michael C. Lesnik


Paul V. Varga

LABOR MEMBER'S RESPONSE
TO
CARRIER MEMBERS' DISSENTING OPINION
TO
AWARD 32584, DOCKET MW-31231
(Referee Fletcher)

The Majority was correct in its ruling in Docket MW-31231 and nothing present in the Carrier's dissent distracts from the correctness and precedential value of this award.

The dissent alleges that the Organization misled the referee in this case. This case was as straightforward as any case can be. Hence, a reasonable mind could not have been confused with the facts of this case as a review of the outcome demonstrates. The only reasonable conclusion that can be reached is that the Minority is confused.

This case was decided upon Interpretation Nos. 12 and 15 of Award 298. Those Interpretations specifically held that the Carrier could not remove employees covered by Section I of Award 298 by simply discontinuing camp cars and headquartering a gang if that gang's headquarters did not remain the same for twelve (12) months. That is exactly what happened in this instance. Gang 1154 was headquartered at Malvern, Arkansas prior to January 3, 1992. On January 8, 1992, the Carrier abolished Gang 1154 and established another welding gang headquartered at Benton, Arkansas effective January 24, 1992. On March 23, 1992, the Carrier abolished the welding gang at Benton, Arkansas and established another headquartered welding gang at Malvern, Arkansas. Such establishment and abolishment occurred within a span of three (3) months. This is the exact same issue that was posed to the Interpretation Committee pursuant to Award 298 resulting in Interpretation Nos. 12 and 15. The findings of those Interpretations specifically forbid the Carrier from establishing and abolishing headquartered positions if the headquarters of those positions had not remained the same for a period of twelve (12) months. The record reveals that that is exactly what the Carrier did in this instance. The Minority complains that:

"The bulletins simply do not reveal this to be such. If it was such and obvious ploy, as the Organization asserts, then the bulletins and abolishment would have been closer together."

The Organization simply cannot comprehend how much closer together the bulletins and abolishment could have been. From January 8 through March 27, 1992, the Carrier abolished and moved the

Labor Member's Response
Award 32584
Page Two

headquarters of this welding gang three (3) times within a span of less than three (3) months. Under Agreement Rule 11, amended November 13, 1987, the bulletin cycle consumes at least twenty (20) calendar days. Inasmuch as the Carrier abolished and rebulletined this gang twice in the aforementioned time frame, the bulletining cycle alone consumed at least forty (40) days of the eighty-seven (87) days of this violation. Clearly, such was a violation of Interpretation Nos. 12 and 15 of Award 298. Apparently, the Minority perceives that three (3) months is greater than twelve (12) months. If so, the Minority's reasoning and comprehension of basic mathematics is inane or not of this world.

The dissent goes on to contend that the Majority erred when it ordered the Carrier to re-establish the lead welder's position alleging that Award 429 of Special Board of Adjustment No. 279 as well as Third Division Award 29975 held that the Carrier was not required to bulletin a lead welder position with a welder helper. The intent of Award 32584 was to restore the compliment of the gang as it was prior to the improper abolishing and re-establishing of the gang's headquarters in the first place. Absent the Carrier's initial violation of the Agreement, the gang compliment was a lead welder and a welder helper. The award merely restores the gang as it was prior to the Carrier's violation of the Agreement. The award is correct and stands as precedent.

Respectfully submitted,


Roy C. Robinson
Labor Member