

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 32646
Docket No. MW-32366
98-3-95-3-186

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.

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

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned Maintenance Gang 6708 employees P. S. Gonzales, R. C. Jensen, M. L. Rodriguez and J. M. Hinojoza instead of assigning Hood River Section Gang 6654 employees J. D. Wright, C. Jennings and G. E. Wilson to perform work of providing flag protection for contractors between Mile Posts 50.74 and 53.00 beginning September 13 through October 18, 1993 (System File N-39/940066).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. D. Wright shall be allowed one hundred fourteen and one-half (114.5) hours' pay at the main line foreman's time and one-half rate, C. Jennings shall be allowed forty-eight and one-half (48.5) hours' pay at the sectionman's time and one-half rate and G. E. Wilson shall be allowed nineteen (19) hours' pay at the sectionman's 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 were given due notice of hearing thereon.

Carrier assigned certain members of Track Maintenance Gang 6708 to perform flagging work for contractor forces that were hired to build the grade for a siding extension. Flagging was done to ensure that the contractor's equipment did not foul Carrier's main line or otherwise jeopardize safety.

The claim does not challenge the use of the Maintenance Gang members to perform flagging during regular working hours. Rather, it seeks compensation only for the overtime hours worked. In support of the claim, the Organization cited several provisions of the Agreement that, it said, unambiguously justified its position. Carrier, to the contrary, maintained there was no Agreement violation or other impropriety.

In work jurisdiction matters of this kind, the moving party bears a heavy burden of proof to establish the merits of its claim. Our review of the Agreement provisions cited by the Organization does not reveal any language that explicitly entitles Claimants to the work in dispute to the exclusion of all others. Moreover, there is no proof in the record to show such entitlement by custom, tradition or historical practice. Accordingly, we must conclude that the Organization has failed to sustain its burden of proof.

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 20th day of July 1998.