

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35082
Docket No. MW-31048
00-3-92-3-974**

The Third Division consisted of the regular members and in addition Referee Martin F. Scheinman 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 employes from the MKT Railroad to unload material from rail cars at Coffeyville, Kansas and assist B&B Gang No. 4303 in performing walkway maintenance work on a bridge located at Freedonia, Kansas on August 5 through 29, 1991 (Carrier’s File 910782 MPR).**
- (2) As a consequence of the violation referred to in Part (1) above, furloughed Kansas Central Division B&B Mechanics B. R. Eaton and B. E. Roper shall each be allowed pay, at their appropriate rates of pay, for an equal proportionate share of the total number of manhours expended by the MKT employes in the performance of work accruing to MPR forces during the period in question.”**

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.

This case involves a claim by the Organization that the Carrier violated the Agreement by assigning employees from the Missouri-Kansas-Texas Railroad ("MKT"), whose seniority is confined to that property, to perform Bridge and Building ("B&B") Subdepartment work on the Missouri-Pacific Railroad ("MP") Seniority District. The disputed work involved the handling, unloading and stacking of B&B materials in the MP materials yard located at Coffeyville, Kansas, and assisting MP B&B Gang 4303 in performing walkway maintenance work on a bridge located at Freedonia, Kansas.

According to the Organization, seniority rights are confined to seniority districts. In this case, the Organization argues, the employees assigned to perform the disputed work were MKT employees holding no seniority on the MP Central Division. The Organization asserts that the Claimants were in furlough status and the Carrier was obligated to recall them instead of assigning the work to employees holding no seniority on the property. It argues that custom and practice is immaterial in light of the clear and unmistakable language of Rules 2(a) and 4(a):

"SENIORITY RIGHTS:

Rule 2. (a) Except as otherwise provided in these rules, seniority rights of employees to new positions or vacancies, or in the exercise of their seniority, will be confined to the seniority district as they are constituted on the effective date of this Agreement.

* * *

SENIORITY ROSTERS:

Rule 4. (a) Seniority rosters of all employees, in each sub-department by seniority districts, will be separately compiled and will show the name, classification and date of entry of the employee into the service, and date of promotion."

According to the Organization, the exclusivity doctrine is irrelevant to this assignment. It seeks a monetary remedy to compensate the Claimants for the lost opportunity to perform the work.

The Carrier, on the other hand, asserts that the assignment was proper. By way of background, the Carrier maintains that this case devolves from the ICC authorized merger of MKT and MP. It explains that the merger was not an "end-to-end" merger, but involved overlapping points, including Coffeyville, Kansas. Previous to the merger, according to the Carrier, each railroad maintained a supply of materials at Coffeyville. With the merger, the Carrier consolidated these material piles, and the MP Yard at Coffeyville became a common MP/MKT facility. The MKT material yard was disbanded and all the material for the MKT property was unloaded, stockpiled and hauled from the MP Yard.

According to the Carrier, the work in dispute was not performed exclusively by one seniority group on a system-wide basis. Thus, the work of distributing material does not belong exclusively to any one craft. It asserts that MKT employees had the right to pick up material at Coffeyville, and deliver it to work sites on the territory covered by the MP BMW Agreement. In any event, the Carrier notes, all the work at the work site was performed by MP employees.

After carefully reviewing the record evidence, we have determined that the Carrier violated the Agreement by utilizing MKT employees to haul and deliver materials from Coffeyville Material Yard to a work site on MP property. We recognize that the Coffeyville Yard is common to both railroads. Nevertheless, at time of this dispute, there were two Agreements. Accordingly, outside the Yard, the Carrier was bound to follow the seniority Rules on each property.

We note that this dispute is not between crafts and does not involve outside contracting. Rather, it involves the application of Seniority Rules to employees within the Carrier's Maintenance of Way craft who belong to seniority districts of separate railroads. The evidence shows that the Carrier used employees from a seniority district on MKT property to perform work on MP property. Under the Agreement, work may not arbitrarily be removed from one seniority district and placed in another.

As to remedy, we stress that this Award applies only to that work which was performed by MKT employees outside the Coffeyville Yard on territory covered by the MP BMW Agreement, but not covered by the MKT BMW Agreement.

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 15th day of November, 2000.