

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 35993  
Docket No. MW-33269  
02-3-96-3-741**

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 Employees  
(Consolidated Rail Corporation)

**STATEMENT OF CLAIM:**

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned Philadelphia Production Zone employees to perform rail gang work (replace rail at Port Richmond Yard) which accrues to employees on the East Regional Production Zone Roster beginning January 16, 1995 and continuing (System Docket MW-3984).
- (2) As a consequence of the aforesaid violation, the Claimants listed below shall each be compensated at their respective rates of pay for ‘ . . . all time earned by the sixteen employees while engaged in work reserved to the employees of the East Regional Production Roster. This must include any and all overtime which may have been paid. Additionally, all lost wages and/or credits normally due must be allowed.’

P. D. Snyder  
B. J. Lichvar  
B. L. Townsend  
R. A. Simpson  
D. J. McDermott  
J. W. Claar  
R. F. James  
G. E. Williams  
D. R. James  
D. A. Hilands

T. M. Williams  
E. R. Castle  
W. D. Davis  
R. A. Cyran  
D. B. Novak  
W. J. Shetty  
R. W. Hunt  
E. C. Geisbrecht  
G. S. Novak”

**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.

It is undisputed that Philadelphia Production Zone employees were used to replace rail at Port Richmond Yard in Philadelphia as alleged in the claim. In this regard, however, it must be noted that the instant dispute is not one where employees of one seniority district were imported across district boundaries to work in a different seniority district. The work in question took place within the limits of the Philadelphia Production Zone, which also happens to lie within the territory of the East Regional Production Gang.

The Organization's claim asserts that the Scope Rule, Rule 1, Appendix E and Article X of the Agreement "... intend to reserve rail gang work for to [sic] the claimants from the East Region Production Gangs." Our review of the cited provisions does not reveal any explicit language that reserves rail replacement work to regional production gangs; the cited provisions go only so far as to describe the geographical territories where work may be performed. (See Third Division Awards 32326 and 33438)

The Organization also contended that past practice supported its position. However, the Carrier's replies on the property refuted this contention. Accordingly, the burden of proof fell to the Organization to provide probative evidence to support its past practice contention. The record is devoid of any such evidence.

Given the foregoing factors, we must deny the claim.

#### 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 19th day of March, 2002.