

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36114
Docket No. MW-33868
02-3-97-3-380

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
(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 Louisiana Division Gang 1003 to perform road crossing renewal work between Mile Posts 412 and 490.2 on the Little Rock Subdivision of the Arkansas Seniority Division beginning February 26, 1996 and continuing (Carrier's File 960427 MPR).**
- (2) The Agreement was violated when the Carrier assigned Louisiana Division Track Gang 1096 to perform road crossing renewal work in the vicinity of Clear Lake Junction and Texarkana, Arkansas (between Mile Posts 477.4 and 490.2) on the Little Rock Subdivision of the Arkansas Seniority Division on March 4 through 14, 1996 (Carrier's File 960426).**
- (3) As a consequence of the violation referred to in Part (1) above, Arkansas Division employees S. D. Niswonger, O. D. Webb, T. R. Langston, T. L. Fisher and K. L. Wheeler shall each be allowed pay at their respective straight time and/or time and one-half rates for all time worked by the Louisiana Division employees on the Arkansas Division territory beginning February 26, 1996 and continuing until the violation ceased.**
- (4) As a consequence of the violation referred to in Part (2) above, Arkansas Division employees D. R. Hilderbrand, E. L. Harris, J. H. McKinnon, T. M. McGhee and R. L. Simmons shall each be allowed pay at their respective straight time and/or time and one-half rates for all time worked by the Louisiana Division employees on the Arkansas Division territory on March 4 through 14, 1996."**

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.

As noted above, this Docket combines two separate claims for review. However, because they were handled as separate claims on the property, the Carrier objects to the purported combination and asserts that this improper act is fatal to both.

Although the substance of the two claims involves similar issues, they are procedurally very different. The Carrier raised a time limitation objection in the first claim. No such contention has been advanced in the second claim.

The first claim alleged that the disputed work began on February 26, 1996. In its August 26, 1996 denial, the Carrier asserted the work actually began on January 2, 1996. It also provided work records to support this assertion. Because the first claim was not filed until April 15, 1996, the Carrier contended the claim was in violation of the 60-day filing time limit established by Agreement Rule 12, Section 2(a). The Organization did not respond to this procedural objection on the property in any manner whatsoever. We are, therefore, bound to accept the objection as being valid and must deny the first claim.

In addition to other contentions in opposition to the second claim, such as lack of damages due to full employment, the Carrier's August 22, 1996 denial raised two matters which are in the nature of affirmative defenses. First, the Carrier asserted that Rule 6 provided it the ability to transfer employees between seniority districts. The Carrier went on to support this assertion by quoting from the Organization's Submission to the Special Board established by Public Law 102-29. As excerpted, the quoted text appears to strongly endorse the use of transfer employees per Carrier's Rule 6 contention.

According to the second assertion, the Carrier maintained the Mediation Agreement dated February 7, 1965 permitted the use of employees across seniority district boundaries to perform the disputed work.

The Organization did not respond to either assertion on the property in any manner whatsoever. Being entirely unrefuted, we must accept the defenses as having been validly proven.

Given the state of this record, we are thus compelled to deny the second claim as well.

Because of our findings herein, it is not necessary to address the Carrier's objection to the combining of the claims.

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 22nd day of July 2002.