

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36116
Docket No. MW-34258
02-3-97-3-770

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-
(Kansas-Texas Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned and used MoPac Employees on Gang 2574 to perform work of cleaning out ditches and dirt work in the vicinity of Burleson, Texas, from Mile Post 243.0 to Mile Post 215.0 on August 1 through 29, 1996 instead of assigning Machine Operators M. E. Brooks and J. M. Geis to perform said work. (System File 3-21-96-18/1029191 MKT).
- (2) The Agreement was violated when the Carrier assigned and used employees on MoPac Gang 2559 to perform the work of cleaning out ditches and slop embankment in the vicinity of Whitesboro, Texas to Denison, Texas from Mile Post 684.0 to Mile Post 661.0 on September 9, 10, 11 and 12, 1996 instead of assigning Machine Operator M. E. Brooks and Truck Driver J. E. Exum to perform said work (System File 3-21-96-35/1032780).
- (3) As a consequence of the violation referred to in Part (1) above, the Claimants shall each be allowed one hundred seventy (170) hours' pay at their respective straight time rates plus any and all overtime worked by the MoPac forces on the dates involved here.
- (4) As a consequence of the violation referred to in Part (2) above, the Claimants shall each be allowed forty (40) hours' pay at their respective straight time rates plus any and all overtime worked by the MoPac forces on the dates involved here.”

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 by the Statement of Claim, the docket purports to combine two claims. The Carrier objected to this tactic and asks that both claims be dismissed because of this procedural impropriety.

The Carrier maintains, and the two records so reflect, that the claims were handled as entirely separate matters on the property. Our review reveals that the two matters involved different work (albeit somewhat related) at different locations, different dates, different pairs of Claimants, raise different issues, and, as a result of the issue difference, require different analysis. The only points of commonality are the identity of one of the Claimants in each pair and the Rules allegedly violated. Absent agreement by the parties, this is not a sufficient basis for combining disputes before the Board.

Notwithstanding the foregoing, the two records present other compelling reasons why neither can be sustained.

The Carrier asserted the first claim, for the month of August 1996, was not timely filed. According to its January 13, 1997 denial, the Organization knew the disputed work began as early as July 1, 1996, but the claim was not filed until September 3, 1996, which is beyond the 60-day filing time limit established by Article 28 Section 1(a).

Although it had ample time and opportunity to do so on the property, the Organization did not respond to the Carrier's timeliness objection in any manner whatsoever. Thus, we must accept the Carrier's assertions about timeliness and the application of Article 28 on this record as being valid. Accordingly, the first claim must be denied on this basis.

A Carrier assertion on the second claim challenged the very heart of its substance. According to the Carrier's February 7, 1997 denial, Gang 2559 "... was not working on the MKT Federation as your claim has asserted. Nor was this gang working within the milepost locations specified in your claim." The Carrier's assertion, which directly refuted the substance of the second claim, thus triggered the Organization's obligation to prove these material elements by providing probative evidence. The record is entirely devoid of such evidence.

Given the state of the record in the second claim, we must find that the Organization failed to satisfy its burden of proof. The second claim, therefore, must be denied.

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.