

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37848
Docket No. MW-36810
06-3-01-3-346

The Third Division consisted of the regular members and in addition Referee Robert M. O'Brien 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 failed and refused to compensate Mr. S. Heffren at his proper rate of pay while assigned to the position of truck driver laborer on Gang No. 1386 at Villa Grove, Illinois (System File UP.HEFFREN.0802990/1205419 MPR).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant S. Heffren shall now be compensated the difference in pay due him for each hour worked on the above-referenced assignment beginning June 11, 1999 and continuing."

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.

In its present iteration, the Union Pacific Railroad Company is comprised of several former freight railroads, including the Missouri Pacific Railroad Company (MP) and the Southern Pacific Transportation Company (SP). Several other railroads were merged to form the SP, including the Southern Pacific Chicago St. Louis Railroad (SPCSL). The SPCSL itself was formed by SP's purchase of a portion of the former Chicago, Missouri & Western Railway Company (CM&W).

On July 5, 1997, the Union Pacific reached an Agreement with the Brotherhood of Maintenance of Way Employees representing employees on the SPCSL that settled outstanding Section 6 Notices on the SPCSL. With two exceptions, the July 5, 1997 Agreement abrogated the Agreement in effect between the BMWE and CM&W and made the Collective Bargaining Agreement between the BMWE and the Missouri Pacific applicable on the SPCSL.

The July 5, 1997 Agreement consolidated the SPCSL into the Illinois Division, Eastern District and System Seniority territories. Employees on SPCSL rosters were dovetailed onto the appropriate Illinois Division, Eastern District and System Seniority rosters. They were given prior rights to positions headquartered on the former SPCSL territory.

As observed above, the July 5, 1997 Agreement abrogated the CM&W Agreement that was in effect for maintenance of way employees on the SPCSL with two exceptions. One of these exceptions provided that:

"Rates of pay in effect on June 30, 1997, will be preserved for employees on the roster as of that date. The July 1, 1997, rate increase and all subsequent rate increases and lump sum payments will be paid in accordance with the Mediation Agreement of September 26, 1996."

On November 7, 1997, four months after the Agreement with the BMW committee representing SPCSL employees was entered into, the Carrier negotiated an Implementing Agreement with that committee and four other BMW committees. The Implementing Agreement was entered into pursuant to Article I, Section 4, of the New York Dock Conditions. It became effective on January 1, 1998.

The November 7, 1997 Implementing Agreement consolidated the Collective Bargaining Agreements and seniority territories of the five railroads, including the SPCSL, into the erstwhile Missouri Pacific. The SPCSL Agreement was abrogated except the July 5, 1997 Agreement was retained for former SPCSL employees who were on the SPCSL roster as of July 5, 1997.

On November 7, 1997, the five BMW committees also reached an understanding with the Carrier to adjust the rates of pay of various positions, effective January 1, 1998. However, an issue arose concerning those employees who were assigned to positions whose rates were being adjusted down. It was agreed that those employees assigned to positions on January 1, 1998, who were making more than the new rates for those positions would retain their existing rates.

It is this Agreement and the July 5, 1997 Agreement applicable to the former SPCSL employees that are fundamental to this dispute. On July 5, 1997, the Illinois Division consisted of two separate territories - the former SPCSL and the former Chicago & Eastern Illinois (C&EI). Employees on the former SPCSL had seniority rights only on the SPCSL territory and former C&EI employees only had seniority on the C&EI territory. The November 7, 1997 Implementing Agreement consolidated these territories and allowed employees to bid on the entire Illinois Division.

This dispute arose when the Claimant, an employee from the former SPCSL territory, bid on a position on the former C&EI territory of the Illinois Division. On August 27, 1990, the Claimant established seniority as a Trackman on the former CM&W. He was on the SPCSL roster on July 5, 1997. On January 1, 1998, the Claimant was a Machine Operator on SPCSL Gang 8192. On June 11, 1999, he was awarded the position of Truck Driver Laborer on Gang 1386 headquartered at Villa Grove, Illinois, on former C&EI territory.

It is the Organization's position that the Claimant's rate of pay in effect on June 30, 1997, was preserved by the July 5, 1997 Agreement and he is entitled to this rate of pay on any position he takes on the Illinois Division. On the other hand, the Carrier maintains that the Claimant's rate of pay was only preserved while he occupied a position on the former SPCSL.

Contrary to the Carrier's contention, the November 7, 1997 Implementing Agreement did not abrogate the July 5, 1997 Agreement with the former SPCSL. Rather, it explicitly retained that Agreement. What must be decided herein is whether the July 5, 1997 Agreement followed former SPCLS employees when they take positions off former SPCSL territory. The Board finds that that Agreement only applies to positions on erstwhile SPCSL territory.

The Board recognizes that Section 2(a) of the July 5, 1997 Agreement does not, on its face, contain any restrictions. It simply states that "Rates of pay in effect on June 30, 1997, will be preserved for employees on the roster as of that date." However, we find that the intent of this provision was to preserve the SPCSL rates of pay in effect on June 30, 1997, for employees who were on the SPCSL roster as of that date. The rate preservation clause could not apply to any territory other than the SPCSL because SPCSL employees did not have seniority rights on other territories until the November 17, 1997 Implementing Agreement was negotiated four months later.

The November 7, 1997 Implementing Agreement consolidated the SPCSL and C&EI seniority territories, among others, and gave former SPCSL employees seniority rights on the former C&EI territory. Rates of pay were also adjusted for various positions, effective January 1, 1998. The rates of pay for some positions were adjusted down. In order to ensure that no employees had their pay decreased by this adjustment, it was agreed that those employees assigned to positions on January 1, 1998, who were earning more than the new rates, would retain their existing rates.

On January 1, 1998, the Claimant was a Machine Operator. If his Machine Operator rate of pay on January 1, 1998 was higher than the new rate for this position he would retain his rate of pay. However, this provision was inapplicable to

the Claimant because he did not bid on a Machine Operator's position. Rather, he accepted a position as a Truck Driver Laborer, an entirely different position.

For all the foregoing reasons, the Board finds that the Claimant was not entitled to his rate of pay in effect on June 30, 1997, because he accepted a position off former SPCSL territory.

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 1st day of August 2006.