

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37962
Docket No. MW-37182
06-3-02-3-186

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Union Pacific Railroad Company (former Southern
(Pacific Transportation Company [Western Lines])

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned Manager J. Gonzalez to perform Maintenance of Way Track Supervisor duties (patrol track) on the main line right of way from Mile Post 258.0 to 245.0 on November 13, 2000 instead of Track Supervisor M. Chavez (Carrier's File 1261538 SPW).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant M. Chavez shall now be compensated for eight (8) hours' pay at their respective time and one-half rate of pay.”

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.

The Claimant was assigned territory from Mile Post 211.7 to 258.6. On November 13, 2000, Manager Signal Maintenance Gonzalez began at Mile Post 258.0 at Redding, California, on the Claimant's territory working toward Mile Post 245.0 at Kimberly Road in Gerber, California. While the Claimant was working his territory, Gonzalez was also on his territory.

The Organization argues that Gonzalez was patrolling track on the Claimant's territory, work that belonged to the Claimant by Agreement. Further, Gonzalez reported a pull-apart at Mile Post 252.3. The patrolling of the track and report of the rail joint separation was a clear violation of the Agreement, in that while Gonzalez has a right to repair bonds, he has no Agreement right to patrol track. Because the Claimant was not permitted to patrol his full territory, the work performed was improperly removed from his historically performed and assigned work and improperly assigned to a supervisor in the Signal Department in violation of the scope and other Rules of the Agreement.

The Carrier denied the claim. The Carrier stated that the report of a rail joint separation was the "SAFE" thing to do and required by Signal Department employees under the Agreement. In fact, the Carrier points out that the majority of broken angle bars are actually found by the Signal Department. More importantly, the work performed in repairing the broken angle bars was done by BMWE-represented employees and not the Signal Department. The Carrier contends that the Claimant did not perform work exclusive to the Organization.

The Board finds no proof in the record that Gonzalez was being utilized to patrol the Claimant's assigned territory. Gonzalez stated that:

"I was Hy-Railing on that day. We as the signal department bond around all angle bars and while inspecting those bond I see a broken angle bar it is my responsibility to report it because it is the SAFE thing to do. The majority of broken angle bars are found by the signal department. I reported two broken angle bars to the MTM on that day."

The Carrier further states in the record that the work that Gonzalez was performing "... had nothing to do with patrolling track."

The Board finds insufficient rebuttal or proofs offered by the Organization to carry its burden. There is a lack of proof that the Carrier assigned a Signal Department supervisor to perform work protected by the scope of the Agreement. There are no statements presented by the Organization demonstrating that the report of two broken angle bars by Manager Signal Maintenance Gonzalez was not incidental, not historical, and not proper performance of his duties. Accordingly, the claim 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 19th day of September 2006.