

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 38136
Docket No. MW-36769
07-3-01-3-297

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 Division
(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 a Western Lines Seniority Gang to perform Maintenance of Way work (remove tracks 754, 755 and 760 and related work) within the territory defined as the El Paso Terminal in El Paso, Texas beginning on January 24, 2000 and continuing through February 29, 2000, instead of Foreman E. P. Beza, Truck Operator J. G. Maesse, Trackmen M. A. Sotomayor, G. Madrid, M. Lara and Machine Operator M. C. Malik (System File MW-00 103/1228837).**
- (2) As a consequence of the violation referred to in Part (1) above, Foreman E. P. Beza, Truck Operator J. G. Maesse, Trackmen M. A. Sotomayor, G. Madrid, M. Lara and Machine Operator M. C. Malik shall now each be allowed two hundred sixteen (216) hours' pay at their respective straight time rates and fifty-four (54) hours' pay at their respective time and one-half rates 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 former Southern Pacific Transportation Company consisted of Eastern Lines and Western Lines. These were separate seniority districts. After the Carrier assumed control of the Southern Pacific, the extant Agreements continued in effect until January 1, 1998. An implementing Agreement placed former Southern Pacific Maintenance of Way employees under the Missouri Pacific Agreement, effective January 1, 1998.

The Carrier's El Paso Terminal is located on the Del Rio Division. There is no El Paso Terminal seniority district for Maintenance of Way employees. Pursuant to Article 31 governing El Paso Yards, track maintenance is performed by "terminal gangs" consisting of employees of both the Western and Eastern Lines based on a workforce as close as possible to a ratio of 60% Eastern Lines employees and 40% Western Lines employees within a class. However, Maintenance of Way employees other than those assigned to "terminal gangs" may be brought into the "terminal limits" when necessary to augment "terminal gang" forces on trackage owned and maintained by their employing Carrier.

The facts that led to the instant claim are somewhat obfuscated. According to the Organization, between January 24 and February 29, 2000, the Carrier allowed Western Lines employees to cross seniority district lines to remove tracks, rail, ties, and switches, as well as haul men and material in the El Paso Terminal. The Organization contends that the Western Lines employees each worked 216 straight time hours and 54 hours of overtime. This work should have been assigned to the

six Claimants, according to the Organization, all of whom are former Eastern Lines employees.

Assuming for the sake of argument that the work in question was "track maintenance," the Claimants did not have a contractual right to this work, in the Board's opinion. As observed above, there is no El Paso Terminal seniority district. Rather, Maintenance of Way employees assigned to work on "terminal gangs" retain either their Eastern Lines seniority or their Western Lines seniority.

When two Western Lines employees worked with three Eastern Lines employees in the El Paso Terminal, they were not encroaching on the Claimants' seniority rights. Moreover, the ratio of 60% Eastern Lines employees and 40% Western Lines employees required by Article 31 appears to have been maintained. Accordingly, the assignment of two Western Lines Maintenance of Way employees to work with three Eastern Lines Maintenance of Way employees did not violate the Agreement. The claim must be denied as a result.

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 23rd day of April 2007.