

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 38140
Docket No. MW-36833
07-3-01-3-390

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

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it assigned Chicago and Northwestern Bridge Gangs 4949 and 4931 to perform duties of redecking and related work on bridges on the Nebraska Division of the old Beatrice Subdivision now known as the Lincoln Subdivision, at Mile Post 3.43, 4.16 and 20.18 on April 27, May 1, 2, 3, 4, 8, 9, 10, 11, 15, 16, 17, 18, 22, 23, 24, 25, 30, 31, June 1, 5, 6, 7, 8, 12, 13, 14, and 15, 2000 instead of Nebraska Division Bridge and Building Subdepartment employes M. R. Henry, C. S. Cauffman, R. C. Hansen, M. J. Coan and J. M. Soto (System File W-0016-153/1240587).**
- (2) As a consequence of the violations referred to in Part (1) above, ' . . . Claimants Henry, Cauffman, Hansen, Coan and Soto must be allowed compensation for all hours worked by these CNW Bridge gang 4949 and 4931 employees on the referred to dates. This compensation must be allowed at their respective Group 3 straight time and overtime 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.

After the Union Pacific Railroad Company (UPRR or the Carrier) acquired the Chicago and Northwestern Transportation Company (C&NW) an Implementing Agreement was negotiated consolidating some of the former C&NW territory into the UPRR Nebraska Division and Eastern District. That Implementing Agreement was effective on June 1, 1997. It provided, in pertinent part, as follows:

"Section 1.

On the effective date of this agreement, the existing C&NW Zone 'C' of Seniority District 4 (excluding ME 321.2 to MP 327.2) will be consolidated with and become part of the existing UPRR Nebraska Division and Eastern District territories. . . .

Section 2.

- (A) Employees holding seniority on District 4 prior to January 1, 1997, will have their names and seniority dates dovetailed into the appropriate Nebraska Division and Eastern seniority rosters. The designation 'C-4' will be placed next to their names. Except as provided in Section 2(H) of this agreement, these employees will have prior rights to all positions and work associated with their existing seniority in the territory transferred. Except as specifically provided herein, District 4 employees working within the transferred territory will be subject to the UPRR rules, rates of pay and working conditions.

(B) Employees holding seniority on the Nebraska Division or Eastern District prior to January 1, 1997, will have the designation 'N' placed next to their names. Except as provided in Section 2(H), these employees will have prior rights to all positions and work on the Nebraska Division or Eastern District territories associated with their existing seniority.¹

After this Implementing Agreement became effective, all gangs were re-bulletined on the expanded Nebraska Division.

The material facts that led to this claim are not in dispute. In April, May and June 2000, Gangs 4949 and 4931 redecked bridges on the Lincoln Subdivision.² The Lincoln Subdivision is part of the Nebraska Division. Some employees on these gangs were 'C-4' employees from the erstwhile C&NW.³ The Lincoln Subdivision is not former C&NW territory.

On June 26, 2000, the Organization filed a claim on behalf of five 'N' employees contending that they had "prior rights" to the bridge redecking work performed on UPRR territory. It argued that the Carrier crossed seniority boundaries when it assigned former C&NW employees this bridge work. According to the Organization, C-4 employees are restricted to work on their former C&NW territory.

The Board disagrees with the Organization's claim that seniority boundaries were crossed when C-4 Maintenance of Way employees performed bridge work on the Nebraska Division. The June 1, 1997 Implementing Agreement combined the two seniority districts into one consolidated Nebraska Division. Therefore, no seniority boundaries existed to cross. Rather, the gangs who were assigned the bridge work performed it on their seniority district. These gangs could work anywhere on the Nebraska Division. They held seniority over the entire division.

¹ Employees hired after June 1, 1997, had no "prior rights."

² Formerly, the Beatrice Subdivision.

³ Three employees were hired after the Implementing Agreement and therefore had no "prior rights."

The Board recognizes that the June 1, 1997 Implementing Agreement gave employees holding seniority on the Nebraska Division prior to January 1, 1997, "prior rights to all positions and work on the Nebraska Division." Despite the reference to "work," in the Implementing Agreement, the intent of the Agreement is clear. It is intended to give Nebraska Division employees "prior rights" to advertised positions on their former territory. The Agreement was never intended to give Nebraska Division employees the exclusive right to all work on their former seniority district. Such a result would make the Implementing Agreement illusory.

The Implementing Agreement did not restrict former C&NW Zone 'C' Seniority District 4 employees to work on their former territory. Rather, they had the right to work throughout the consolidated Nebraska Division.

Inasmuch as Gangs 949 and 4931 performed bridge work on the combined Nebraska Division on which they held seniority, there was no contractual violation and the claim is 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.