

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 38951
Docket No. MW-37372
08-3-NRAB-00003-020406
(02-3-406)

The Third Division consisted of the regular members and in addition Referee Dennis J. Campagna when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(BNSF Railway Company (former Burlington
(Northern Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement when, effective May 5, 2000, it abolished the Montana District Mobile Welding Crew 543-136 positions working in conjunction with the PJ-8 and MC-3 Switch Grinders and re-established these mobile positions, effective July 10, 2000, as “crews 481-100 and 481-200 with fixed headquarters at Havre, Montana (System File B-M-788-H/11-00-0495 BNR).
2. As a consequence of the violation referred to in Part (1) above, the Carrier shall now ‘advertise and assign the positions as mobile, and that each employee assigned to the positions until the violation is corrected, be allowed to the negotiated meal allowance per diem of \$21.25, for each calendar day, beginning July 10, 2000 and continuing until the violation is corrected. We request that each employee receive the negotiated lodging allowance of \$26.75 per diem for each calendar day, beginning July 10, 2000 and continuing until the violation is corrected. We request that each employee assigned to the positions, receive week-end travel allowances for all travel between their residences and end of work week, and start of work week

reporting locations, beginning July 10, and continuing. We further request that each employee assigned to the crews receive 5% of their earnings while assigned to the positions.”

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 Third Division Award 37844, these same parties sought to review the following claim before the Board:

- “(1) The Carrier violated the Agreement when on May 5, 2000 it abolished Montana Seniority District 200 mobile welding positions working in conjunction with Switch Grinders PJ-8 and MC-3 assigned to Welding Foreman E. Golgade, Head Welder D. Pulse, Grinder Operators J. Doohen and F. Music and re-established these mobile positions effective July 10, 2000 as head quartered at Havre, Montana and assigned to junior Montana Seniority District 200 employees S. Lumsden, R. Biem, B. Borst and P. Youngbauer. (System File B-M-791-H/11-00-0498 BNR).
- (2) As a consequence of the violation referred to in Part (1) above, Claimants E. Goldade, D. Pulse, J. Doohen and F. Music shall now . . . receive any pay differentials to which they would be

entitled from July 10, and continuing. We request that each Claimant receive pay equal to any and all overtime paid the positions improperly headquartered at Havre, beginning July 10. We request that Claimants receive the \$21.50 meal per diem for each calendar day beginning July 10. We request that Claimants receive a payment of 5% for any and all earnings paid the employees on the positions while headquartered at Havre. We request that Claimants receive payment for any unreimbursed week-end travel they incur beginning July 10. This claim is to continue until such time as the positions are properly reassigned as mobile positions.”

In rejecting the foregoing claim, the Board noted in relevant part:

“Regardless of whether the Carrier has previously used mobile gangs to work with switch grinders, it is not prohibited from using headquartered crews where circumstances warrant. While the Carrier’s inherent rights are not unfettered, they must be respected in the absence of evidence that the Carrier acted arbitrarily or without good faith. Here, we reject the Organization’s assertion that the Carrier intentionally switched crews to avoid payment of benefits negotiated for mobile crews. The headquartered positions were compensated for time spent away from home and they were appointed in the exercise of seniority according to the parties’ Agreement. No bad faith is suggested under these facts.”

Res judicata, or issue preclusion, recognizes that a final judgment rendered on the merits is conclusive as to the rights of the parties and as to them, constitutes an absolute bar to a subsequent action involving the same claim. The Board has consistently and for good reason followed the res judicata principle. (See Third Division Awards 37711 and 28550, together with Awards cited therein.)

Form 1

Page 4

Award No. 38951

Docket No. MW-37372

08-3-NRAB-00003-020406

(02-3-406)

Following a careful review of the instant matter, we find a substantial identity of the claim decided by the Board in Third Division Award 37844. Accordingly, the Board finds the issue before us is res judicata, and the claim must be dismissed.

AWARD

Claim dismissed.

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 29th day of February 2008.