

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40211
Docket No. MW-38597
09-3-NRAB-00003-040630
(04-3-630)**

The Third Division consisted of the regular members and in addition Referee Steven M. Bierig when award was rendered.

**(Brotherhood of Maintenance of Way Employes Division -
(IBT Rail Conference
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company (former Chicago
(and North Western Transportation Company)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it assigned System Gang 9004 employees to surface track between Mile Posts 56 and 77.4 on the Fairmont Subdivision on August 27, 28 and 29, 2003 instead of Seniority District T-2 Surfacing Gang 2913 employees J. Coolican, J. Stirling, M. Peterson and R. Sandoval (System File 2RM-9486T/1382424 CNW).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants J. Coolican, J. Stirling, M. Peterson and R. Sandoval shall now each be compensated at their applicable rates of pay for all straight time and overtime hours expended by System Gang 9004 employees in the performance of the aforesaid work.”**

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.

Foreman J. Coolican, Class A. Machine Operator J. Stirling, Class B. Machine Operator M. Peterson and Class B Machine Operator R. Sandoval established and retain seniority within their respective classifications on the T-2 Seniority District dating from July 8, 1977, July 9, 1999, June 30, 1982 and June 27, 2003, respectively. On the dates involved herein, all of them were assigned and working on District T-2 Surfacing Gang 2913.

In the instant case, Consolidated Gang 9004 was assigned to surface track on the Fairmont Subdivision. In order to perform this surfacing work, the Carrier had Consolidated System Gangs surface a large portion of more than 20 miles of track. The Organization filed the instant claim contending that the Agreement was violated when the Carrier assigned System Gang 9004 to perform district maintenance work on the Fairmont Subdivision. It characterized the violation by alleging that the work performed was surfacing and lining work that is reserved to district employees.

The Organization contends that this work has historically and customarily been performed by members of the T-2 Seniority District, of which Claimants are members. It contends that the work in question should not have been performed by members of System Gang 9004. As a remedy, it asks that Claimants Coolican, Stirling, Peterson and Sandoval shall now each be compensated at their applicable rates of pay for all straight time and overtime hours expended by System Gang 9004 employees in the performance of the aforesaid work.

Conversely, the Carrier contends that the burden is on the Organization to prove that members of the T-2 Seniority District should have been assigned to this

work. According to the Carrier, it is undisputed that both groups of employees have seniority to work on the territory involved pursuant to the negotiated Implementation Agreement effective January 1, 1998. According to the Carrier, the Board has specifically ruled that System Gang employees may perform the work in question and, therefore, the claim must be denied. The Carrier contends that it was acting properly when it made the relevant work assignments. Thus, the Organization has been unable to prove that the Agreement was violated.

After a review of the record evidence and positions of the parties, the Board agrees with the Carrier that the Organization failed to meet its burden of proof. Based on Third Division Awards 37847 and 38087, the Carrier acted properly when it assigned the relevant work to System Gang 9004. Accordingly, the claim is 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 21st day of December 2009.