

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40806
Docket No. MW-40727
10-3-NRAB-00003-080606**

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
(
(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 employees of Texas District Tie Gangs 9167, 9176, 9196, 9197, 3809, and 3837 to replace ties on the Southern District Tie Gang territory between Belt Junction Mile Post 229.1 and Spring Junction Mile Post 210.8 in the Houston Terminal starting on June 8 through June 15 and on June 23 through June 30, 2007 instead of Southern District Tie Gang Roster employees (System File MW-07-97/1480174 MPR).
- (2) As a consequence of the aforesaid violation, Claimants K. Mallett, R. Foley, R. Ruffin, G. Housos, N. Noska, G. Haby, H. Sanchez, R. Richard, D. Schmidt, A. Joseph, A. Morgan, O. Baker, W. Nelson, J. Zeno, R. Castille, J. Garcia, W. Drews, K. Kelso, H. Singleton, P. Lejeune, W. Menard, E. Thomas, N. Sinegal, Jr., R. Leleuz, J. Bob, Sr., D. Gilder, G. Almeida, J. Castro, J. Bergeron, J. McGowen, P. Posas, H. Demouchet, B. Harris, P. Griffin, C. Nash, J. Myers, W. Cunningham, H. Batiste, M. Franklin, Jr., K. Nunn, A. Gobert, D. Lindsey, M. Drews, L. O Quain, B. O Quain, D. Carter, A. Boudreaux, R. Warren, R. Salazar, M. Perez, III, T. Basco, A. Baker, B. Adams, G. Curtis, A. Murray, L. Heslip, R. Green, L. Robinson, D. Finister, J. Richardson, W. Bone, R. Sandoval, M. Johnson, T. Jones, J. Poole, G. Johnson, J. Rowley,

R. Channel, B. Suter, J. Rowley, L. Adams, L. Johns, Jr., E. Holliday, L. Isaac, L. Wanko, L. Brooks, F. Garner, T. Reney, I. Dimas, C. Royer, A. Stevens, S. Moore, J. Hudson, J. Jenkins, R. Smith, W. Fluitt, R. Gregory, R. Allen, D. Armstrong and A. Frank shall now each be compensated at their respective and applicable rates of pay for all straight time and overtime hours worked by the employees of the Texas District Tie Gangs 9167, 9176, 9196, 9197, 3809 and 3837 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.

The instant claim raises a work jurisdiction dispute between employees of two adjacent seniority districts. The Organization contends the tie replacement work was performed on the Southern District by employees holding seniority only on the Texas District. The Carrier submits the territory in question is part of the Palestine Subdivision of the Texas District. Therefore, the Texas District employees were properly working within the boundaries of the Texas District.

The Organization's Submission contained considerable new information and argument that was not part of the record developed by the parties during their handling of the matter on the property. It is well settled that such new material may not be raised for the first time before the Board. Accordingly, we have not considered it.

The on-property record has been thoroughly reviewed and carefully considered. That review convinces us that the instant claim may not be sustained for either of two independent reasons. First, in its November 15, 2007, reply to the Organization's appeal, the Carrier raised a procedural objection pursuant to Rule 22 of the Agreement. According to the Carrier, that Rule requires the Organization to properly inform the Carrier representative of the rejection of the Carrier's initial denial in addition to any appeal from that denial. By its terms, Rule 22 requires the matter to be considered "closed" if the Organization fails to comply. According to the Carrier's assertion, the Organization failed to comply with Rule 22. Although the Organization thereafter supplemented the record by letter dated December 11, 2007, it entirely ignored the Carrier's procedural assertion. Therefore, under the circumstances, we are compelled to accept the Carrier's assertion as proven fact.

Turning to the second reason, the focus of the dispute on the merits is the line of demarcation separating the Texas and Southern Districts. The Carrier supplied several items of evidence showing that the territory in question is within the Texas District and not the Southern District. The Organization's contribution to the on-property record did not include any evidence in support of its contentions. On the merits, therefore, we must find that the Organization failed to prove a violation of the Agreement as alleged in the claim. 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 15th day of December 2010.