

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40917
Docket No. MW-40827
11-3-NRAB-00003-0090093**

The Third Division consisted of the regular members and in addition Referee Sherwood Malamud when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division –
(IBT Rail Conference
PARTIES TO DISPUTE: (
(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 Texas Seniority District Tie Gangs 9187 and 9229 to perform crossing repair work on the Southern District Tie Gang territory on the Flatonia Subdivision between Mile Posts 150.00 and 120.00 on July 23, 24, 25, 26 and 27, 2007 (System File MW-07-128/1487310 MPR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants R. Foley, R. Ruffin, G. Housos, R. Richard, D. Schmidt, W. Nelson, J. Zeno, R. Castille, M. Vasbinder, K. Kelso, H. Singleton, W. Menard, N. Sinegal Jr., R. Leleux, J. Bob Sr., G. Almeida, J. Castro, J. Bergeron, H. Demouchette, B. Harris, G. Curtis, A. Murray, L. Heslip, R. Green, L. Robinson, D. Finister, and J. Richardson shall now each be compensated for seventy (70) hours at their respective 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.

The Carrier assigned Texas District Tie Gangs 9187 and 9229 to perform crossing repair work on Southern District territory. The assignment crossed seniority districts. In the on-property processing of this claim, the Carrier admitted error in the assignment of Texas District Tie Gangs to perform crossing repair work on the Southern District territory. The Carrier asserted that it had assigned the work in this manner for the last ten years, without objection from the Organization.

The matter at issue concerns the remedy. The Organization claims 70 hours pay for each Claimant at overtime rates. The number of hours claimed is measured by the hours worked by the members of Texas Tie Gangs 9187 and 9229. The Organization cites many Awards in which the remedy was calculated on the basis of the time worked by the employees wrongfully assigned. Third Division Awards 30408 and 30409 are but two of the Awards that measure time lost by the hours worked by those assigned in error to perform the claimed work.

The Carrier offered 35 hours to each Claimant at straight time rates. It calculated the time involved at 35 hours, as the measure of track time that each Claimant would have spent performing the work in question. The Carrier calculated the 35 hours by subtracting the time the employees would have been engaged in servicing equipment and daily miscellany from the time spent performing maintenance work on the track. The Carrier emphasizes that the Southern District Claimants were all fully employed at the time. It notes that at least one of the Claimants was on vacation at the time and not available to perform the work.

The Board recently issued Third Division Award 40813 that involves the same factual pattern as this case. It occurred in April 2007. The dates involved are all that differentiate the factual pattern underlying Award 40813 and the factual

pattern of this case that occurred some three months later in July 2007. All Claimants in this case (July 2007) were named as Claimants in Award 40813.

The facts in Award 40813 are as follows. The Carrier assigned four Texas District Tie Gangs to perform work on the Southern District in April 2007. The issue in Award 40813 concerned the amount of the remedy. The Organization sought 70 hours' pay at overtime rates for each claimant. The Carrier offered 35 hours at straight time rates. In this case, the Board is asked to address the very same remedial issue.

The Organization supplemented the record on January 7, 2011, with Third Division Awards 40812 and 40819. In both Awards, the Board measured the amount of the remedy by the hours worked by the contractor's employees. However, the Board specifically noted 40812 and 40819 involved contracting cases. The instant case involves the use of Carrier forces from the wrong Seniority District.

The Board concludes that because this case involves the very same violation, i.e., the assignment of Texas District Tie Gangs to perform work on Southern District territory, and it involves the same claim for relief, and many of the same claimants, the remedy in this case should be the very same as the relief the Board awarded on December 15, 2010, in Award 40813:

“ . . . those Claimants who were not unavailable for work due to vacations or similar absences during the dates the work was performed (April 11-14, 2007) should be paid additional straight time compensation in accordance with the Carrier's position.”

For the violation in July 2007, the Carrier shall compensate each of the Claimants 35 hours pay at their respective straight time rates of pay.

AWARD

Claim sustained in accordance with the Findings.

Form 1
Page 4

Award No. 40917
Docket No. MW-40827
11-3-NRAB-00003-0090093

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 24th day of March 2011.