

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 28852
Docket No. MW-28653
91-3-88-3-496

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

PARTIES TO DISPUTE; (Brotherhood of Maintenance of Way Employes
(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 Kansas Division employes to perform spot tamping work on the Central Division between Mile Posts 358 and 335, Garnett to Osawatomie, Kansas from June 22 through June 26, 1987 (Carrier's File 871098).

(2) As a consequence of the aforesaid violation, Central Division Foreman N. C. Palone and Machine Operators D. C. Stahl and S. K. Smith shall each be allowed forty (40) hours of pay at their respective straight time rates, and pay at their respective time and one-half rates for all overtime hours worked by the Kansas Division forces on the Central Division from June 22 through 26, 1987."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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 waived right of appearance at hearing thereon.

There is no dispute in this record that the Carrier utilized Kansas Division employees for work between June 22 and June 26, 1987, on the Central Division. The Organization argues that the work accrued to the Central Division employees under Rules 1 and 2 of the Agreement. Rule 2(a) states in pertinent part that:

"Except as otherwise provided in these rules, seniority rights...will be confined to the seniority district as they are constituted on the effective date of this Agreement." (emphasis added)

Therefore the Organization argues that Kansas Division employees should not have been used. Opportunities for overtime or the recall of furloughed Central Division employees should have occurred.

The Carrier defends its action under authority of Rule 6(a). That Rule states:

"Employees or gangs temporarily transferred by direction of management, from one seniority district to another will retain their seniority rights on the district from which transferred."

The record demonstrates that this was the Carrier's position discussed in correspondence and confirmed in conference.

Rule 2(a) clearly confines seniority to seniority districts. The record supports that Central and Kansas are two separate districts. In response to the Carrier's October 12, 1987, defense that the employees were working in accordance with Rule 6(a), the Organization stated:

"Inasmuch as this work was on the Central Division, employees off the Kansas Division should not have been allowed to perform same. If employees can move back and forth from one division to another, what purpose does a seniority roster serve? This was apparently not an emergency situation, therefore, furloughed employees should have been recalled or at least the Central employees should have been given the opportunity to work any overtime."

This is a response to the Carrier's Rule 6(a) defense. While not explicitly stating Rule 6(a), it is clear that the Organization was denying the right of the Carrier to transfer employees under Rule 6(a) and supersede Rule 2(a) on seniority. The Carrier never indicated it was an emergency at any point, including the claims conference where the parties discussed and the Organization rejected the Carrier's argument of a temporary transfer. Further study of the record finds no probative evidence that the employees were temporarily transferred, but only that "the men of the Kansas Division have been working behind the undercutter for five working days which is in accordance with Rule 6(a) Transfer and Temporary Service."

We have given serious study to the record and find that the seniority rights are "confined" to the seniority districts (Third Division Awards 24576, 25964). Kansas Division employees had no demonstrable rights in these instant circumstances to work on the Central Division. We are in agreement with Third Division Award 25964 which stated:

"The Carrier further cites Rule 6 and 7, involving transfers on a temporary or permanent basis from one Seniority District to another. Whatever the application of such Rules, there is no showing that such is intended to contravene Rule 2. In any event, the incident here under review was not shown to be a 'transfer' in any sense."

We find the Carrier violated Rule 2 of the Agreement. The Carrier has argued that the Claim is excessive and duplicated in another instance. Certainly, the Carrier is not required to pay duplicative claims. We sustain this instant Claim upon the facts herein presented.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 25th day of June 1991.