

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

(Brotherhood of Maintenance of Way Employes  
PARTIES TO DISPUTE: (  
(St. Louis Southwestern Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier assigned Southern Pacific Agreement Laborer L. E. Ziegler instead of St. Louis Southwestern Agreement Laborer B. J. Taylor to perform laborer's work moving and setting up Trailer 1810 at Houston and Corsicana, Texas on the St. Louis Southwestern seniority territory on Sunday, April 2, 1989 and Monday, April 3, 1989 (System File MW-89-19-CB/480-43-A).

(2) As a consequence of the aforesaid violation, Mr. B. J. Taylor shall be allowed eight (8) hours of pay at the laborer's straight time rate and eight (8) hours of pay at the laborer's time and one-half rate."

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.

The Organization seeks eight hours at the straight-time rate and eight hours at the time and one-half rate for failure of the Carrier to use Claimant on April 2 and 3, 1989, to assist in moving a Carrier kitchen trailer from Houston to Corsicana, Texas, and cleaning up after its use. Claimant, a furloughed Carrier employee, held seniority on the South Texarkana Seniority Roster, while the employee that was used, a Southern Pacific employee, did not. The Organization alleges that this crossing of seniority lines constitutes a violation of the Agreement.


In Third Division Awards 28386 and 26374, this Board held that work on kitchen trailers was not reserved exclusively to members of the Organization. For there to be a violation the seniority district provisions of Article 2 (Seniority Rules), there must first be an indication in Article 1 (Scope) that the work in question accrues to an individual covered by the Agreement. That is not the case and this claim must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 7th day of May 1992.

RECEIVED  
(MAY 21 1992)  
THIRD DIVISION

LABOR MEMBER'S DISSENT  
TO  
AWARD 29203, DOCKET MW-29298  
(Referee Gold)

In this dispute, the Carrier assigned an employe covered under a Maintenance of Way Agreement with the Southern Pacific to perform work in an area covered by a Maintenance of Way Agreement with the St. Louis Southwestern Railway Company. It was the Organization's position that once the Carrier chose to use a Maintenance of Way employe to perform this work, it was required to use the senior employe on the seniority district where the work was performed.

The Board erred when it relied on two prior awards, one of which dealt with an assignment of work across craft lines and one which dealt with the failure of the Carrier to assign a foreman to supervise members of his crew engaged in working with a kitchen trailer. That dispute was ultimately decided in the Carrier's favor based on the premise that a Carrier may determine the amount of supervision necessary. Neither of those awards dealt with the issue involved in this claim.

In this claim, the Carrier chose to assign a Maintenance of Way employe to perform this work. Hence, it was required to apply the provisions of the appropriate Agreement. The provision provides that an employe's seniority is restricted to a particular seniority district and, as such, the senior employe where the work was performed should have been assigned.

Labor Member's Dissent  
Award 29203  
Page Two

This award erroneously held that since the work involved was not reserved exclusively to Maintenance of Way employees, then a violation of the seniority district provisions would not apply. Whether the work was reserved exclusively to the Maintenance of Way is of no import. It was the Carrier that chose to assign Maintenance of Way employees to perform this work. Therefore, it was obligated to assign the senior Maintenance of Way employee in accordance with the seniority provisions of the controlling Agreement. The Carrier was in error in not properly applying the Agreement and the Board sanctioned the error by basing its decision on an issue irrelevant to the facts of the case.

Therefore, I dissent.

Respectfully submitted,

  
D. D. Bartholomay  
Labor Member