

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 29934
Docket No. MW-29534
93-3-90-3-476

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(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, on June 6, 7 and 8, 1989, assigned employes covered by the MKT Agreement to perform track work on the Red River Division between Mile Posts 126 and 127 in the vicinity of Bonham, Texas which is territory covered by the Missouri Pacific Agreement (Carrier's File 890694 MPR).
- (2) As a consequence of the aforesaid violation, Red River Division Foreman E. E. Exum, Assistant Foreman L. B. Sasser, Trackman Driver B. M. Talbott and Trackman H. O. Beaty shall each be allowed twenty-four (24) hours of pay at their respective straight time rates and three (3) hours of pay at their respective time and one-half overtime rates."

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 employe 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 contends, and the Carrier concedes, that it assigned extra gang forces from the Missouri-Kansas-Texas Railroad to "perform work related to a washout" within the Red River Division's seniority territory. The Organization seeks pay for employees holding such seniority.

Rule 30, Emergency Service, states in pertinent part as follows:

"Men temporarily employed during periods of floods, washouts, snow blockades, and fires will not be considered as coming under the provision of this Agreement."

The reference to use of non-Agreement personnel in the case of "washouts", as here, would appear to dispose of the matter. The Organization makes some contention that it was necessary for the Carrier to demonstrate that an "emergency" condition existed. The admitted "washout" condition meets the Rule 30 "emergency" definition. If further proof is required, it may be found in the fact that the Claimants were themselves working extra hours in connection with "washout" conditions.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 2nd day of December 1993.