

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30001
Docket No. MW-29437
94-3-90-3-367

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 assigned a heavy equipment operator working under the International Union of Operating Engineers' Agreement (Mr. K. A. Moore) instead of Brotherhood of Maintenance of Way Employee P. R. Whiting to operate the MPX 54 crane on a bridge gang working in the vicinity of Camden, Arkansas beginning March 9, 1989 (Carrier's File 890530 MPR).
- (2) As a consequence of the aforesaid violation, Mr. P. R. Whiting shall be allowed the difference between the 2nd Class Carpenter's rate and the hoisting engineer's rate for all straight time hours worked beginning March 9, 1989 and continuing. In addition, Mr. Whiting shall be compensated at the hoisting engineer's time and one-half rate for all overtime hours worked by Mr. K. A. Moore beginning March 9, 1989 and continuing until the violation is corrected."

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.

As Third Party in Interest, the International Union of Operating Engineers was advised of the pendency of this dispute, but did not file a Submission with the Board.

At issue here is the assignment of an employee represented by the IUOE rather than the Organization to operate heavy equipment (MPX 54) in assisting, as stated by the Organization, "a division B&B gang working in the vicinity" of Camden, Arkansas.

The Organization's Scope Rule refers in Paragraph (e) to Roadway Machine Operators and Roadway Machine Helpers, with the following significant "Note":

"Does not include operators and helpers on heavy equipment on Eastern and Western except when assigned to system bridge gangs."

The Claim as initiated makes reference to assistance to a "division B&B gang", clearly distinguishable from a "system bridge gang." The claimed work specifically falls within the exception noted in the Scope Rule. Thus, no Rule violation can be found in the work's assignment to an employee represented by the IUOE. Third Division Award 29111 is in direct support of this position.

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 21st day of January 1994.