

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 31367  
Docket No. MW-31996  
96-3-94-3-228

The Third Division consisted of the regular members and in addition Referee John C. Fletcher 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 Eastern District employes to install switchties in the vicinity of Mile Post 294 on the Arkansas Division on February 16, 17, 18, 19 and 22, 1993 (Carrier's File 930392 MPR).
- (2) As a consequence of the violation referred to in Part (1) above, Arkansas Division employes S. D. Niswonger, P. J. Mahoney, R. L. Best, J. W. Dee, E. L. Harris, D. J. Whitlock, E. Gant, Jr., D. D. Hardison and J. W. Albert shall each be allowed pay at their respective time and one-half rates for all wage loss suffered as a result of Eastern District employes performing work on their seniority territory."

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 waived right of appearance at hearing thereon.

The substance of the Organization's claim is that when Carrier, on five days in February 1993, used members of Eastern District Tie Gang 9381 to install switch ties near Kensett, Arkansas seniority entitlements of Arkansas Division employees were violated, and these employees are entitled to compensation for the lost work opportunity. The Organization maintains that when work is done outside the confines of a DTG order, it is work belonging to Division Forces on their respective territories.

Carrier argues and submits evidence that EDTG was working within project limits, and that Carrier is not restricted from assigning tie replacement work to district forces, as was done here. Further, that the assignment of EDTG 9381 to do the work involved in this claim was proper under the terms of the Memorandum of Agreement of March 19, 1981, as discussed in its May 14, 1984 letter.

Carrier's position is found to be persuasive by the Board. The Organization has not shown that EDTG 9381 was worked at Kensett, Arkansas in violation of the March 19, 1981 Agreement. The claim will be denied.

**AWARD**

Claim denied.

**ORDER**

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to Claimant(s) not be made.

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

Dated at Chicago, Illinois, this 29th day of February 1996.