

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31569
Docket No. MW-31993
96-3-94-3-229**

The Third Division consisted of the regular members and in addition Referee Robert Richter 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 Louisiana Division Machine Operators H. L. Nixon and J. L. Richardson to perform work on the DeQuincy Division territory at Mile Posts 602 - 621 and 628 - 641 on February 6 and 7, 1993 (Carrier's File 930391 MPR).

(2) The Agreement was violated when the Carrier assigned New Orleans Division forces, Foreman B. W. Jennings, Machine Operators I. O. Brossett and F. H. Payton, to perform work on the DeQuincy Division territory at Mile Posts 643, 595 - 600 and 621 - 633 on February 3, 6 and 7, 1993 (Carrier's File 930390).

(3) As a consequence of the violation referred to in Part (1) above, DeQuincy Division Machine Operators H. Frank, J. T. Austin and A. Vidrine shall each be compensated, at their respective rates of pay, for an equal proportionate share of the total number of man-hours expended by the New Orleans Division machine operators in the performance of work on the DeQuincy Division territory.

(4) As a consequence of the violation referred to in Part (2) above, DeQuincy Division Foreman A. Davis, Machine Operators J. T. Austin and A. Vidrine shall each be compensated, at their respective rates of pay, for all man-hours expended by the New Orleans A forces in the performance of work on the DeQuincy Division 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 facts in this case are not in dispute. On the claim dates in question the Carrier assigned New Orleans Division employees to perform work on the DeQuincy Division, which are separate seniority divisions.

The Carrier argues that the Claimants were fully employed and as such are not entitled to any monetary award. It further argues that the claims were handled separately on the property and improperly combined before this Board. Finally it argues that the Claimants are pyramiding their claims by claiming two separate violations on February 6 and 7, 1993.

The Organization submits Rule 2 of the Agreement was violated and the Awards have overwhelmingly sustained its position that a monetary claim is valid.

The Board finds that because of the similarity of the claims it will not dismiss the claims as being improperly filed.

The Board also finds that the Carrier has supported its position as to the pyramiding of the claims. The Third Division in Award 27122 held:

"This Board has consistently held that pyramiding, compounding and duplicating claims cannot be supported. For this reason alone the Claim warrants dismissal."

Therefore, the claim contained in paragraph (1) of the Statement of Claim will be dismissed.

As to the remainder of the claim the Board finds the Organization's position to be well taken. If the Board were to accept the Carrier's argument that the Claimants were fully employed and not entitled to a monetary award, it would be tantamount to giving the Carrier the right to violate Rule 2 at will. Ergo the claim contained in Paragraph (2) of the Statement of Claim will be sustained.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 25th day of July 1996.