

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31832
Docket No. MW-31322
96-3-93-3-255**

The Third Division consisted of the regular members and in addition Referee W. Gary Vause when award was rendered.

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(The Denver and Rio Grande Western Railroad Company**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier assigned a North Yard Section employee, R. Barela, to perform flagging work on the Burnham Section territory at M.P. 001.0 at Burnham, Colorado, on September 16, 1991 and continuing (System File D-91-25/MW-09-92).

(2) As a consequence of the violation referred to in Part (1) above, Foreman E.G. Chavez shall be compensated at the foreman's '* time and one-half rate of pay for all overtime work performed by Mr. Barela commencing September 16, 1991 and continuing until the violation ceases.'"**

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 were given due notice of hearing thereon.

The Claimant had established and held seniority as a Track Foreman on the Burnham Section territory when this dispute arose. The Organization argues that the Claimant was entitled to the work of flagging duties at Mile Post 001.0 at Burnham, Colorado, which was assigned by the Carrier to another employee who only held seniority on the North Yard Section territory, but no seniority on the Burnham Section territory. The Organization asserts that the Carrier thereby violated Rules 6 (Establishment of Seniority), 11 (Assignment of New Positions -- Vacancies), and 22 (Overtime and Calls) of the Agreement.

The Organization relies primarily upon its interpretation of Rule 6(c) which provides that seniority rights of employees shall be confined to the Seniority District and the Subdepartment where employed:

"RULE 6
ESTABLISHMENT OF SENIORITY

* * * *

Seniority Confined to Subdepartment

(c) Except as provided in subsection (c) of Rule 9 seniority rights of all employees shall be confined to the seniority district and subdepartment where employed."

The Carrier's position is summarized in a letter from the Carrier's Division Engineer to the General Chairman, under date of January 23, 1992:

"In response to your claim we offer that the historical northern limit of Burnham Section has been the north end of the 7th Street Yard which was considered to be at Speer Boulevard. When the corridor came into play in the mid 1980's the tracks were shifted west and D&RGW property ended at Speer Boulevard at approximately M.P. 0.13 South. From this point south to South Denver all the Main Line belongs to the Burlington Northern and is not maintained by our forces. From Speer Boulevard north through North Yard is maintained by North Yard Section forces. A map of this area is enclosed for your reference.

Your claim is obviously for work done at the 15th Street location which is not near M.P. 1.0, however, 15th Street is north of the M.P. 0.13S southern limit of North Yard Section as well as the M.P. 0.66S stated in your claim letter, therefore, this work is obviously outside of Burnham Section limits and the claim must be denied in its entirety."

The Carrier raised an issue of fact which is essential to the resolution of this case. In order for the Organization to prevail, it must establish that the Carrier crossed seniority lines in violation of the Agreement. The Carrier's argument and supporting documentation deny and put in issue the Organization's assertion that the employee holding seniority on the North Yard Section territory performed Track Foreman duties in the Burnham Section territory.

The Organization has the burden of proof in this case. The Organization provided no convincing evidence in response to the Carrier's position that the work in question was actually performed within the jurisdiction of the North Yard Section. The Organization's case therefore must fail for lack of proof.

AWARD

Claim denied.

ORDER

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

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 26th day of December 1996.