

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 35733
Docket No. MW-32743
01-3-96-3-50

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Union Pacific Railroad Company (former Missouri-
(Kansas-Texas Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it assigned and used MoPac employes on Gang 9103 to perform work of unloading track material (tie plates, spikes and rail anchors) from gondola cars between Mile Posts 394.0 and 415.0 on the MKT territory beginning November 1 through 20, 1994, instead of assigning Messrs. J. Ybarra, P. R. Horne, Sr., S. L. Triebel, L. L. Foster, B. C. Dunn, J. D. Sager, C. A. Small, J. L. Van Eaton, S. L. Riley, M. D. Winfrey and R. J. Parenteau to perform the work. (System File 2-22/950100 MKT)
- (2) The Carrier violated the Agreement when it assigned and used MoPac employes on Gang 9103 to perform work of unloading track material (tie plates, spikes and rail anchors) from gondola cars between Mile Posts 387.7 and 415 on the MKT territory beginning December 1 through 20, 1994, instead of assigning Messrs. J. Ybarra, L. L. Foster, S. L. Triebel, J. L. Van Eaton, S. L. Riley, R. J. Parenteau, C. A. Small, P. R. Horne, Sr., L. G. Smith, M. D. Winfrey, J. D. Dickenson to perform the work. (System File 2-22/950110).
- (3) As a consequence of the violations referred to in Part (1) above, the Claimants shall each be allowed one hundred sixty-eight (168) hours' pay at their respective and appropriate straight time rates

plus any and all overtime worked by the MoPac forces beginning November 1 through 20, 1994.

- (4) As a consequence of the violation referred to in Part (2) above, the Claimants shall each be allowed one hundred sixty-eight (168) hours' pay at their respective and appropriate straight time rates plus any and all overtime worked by the MoPac forces beginning December 1 through 20, 1994."

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.

Except for differences in dates and the identity of a few of the named Claimants, these two consolidated claims are indistinguishable from those presented in the companion claims that were decided in favor of the Claimants by the Board in Third Division Award 35732. As explained more fully therein and in Third Division Award 32331, the Board has consistently held that the Carrier cannot assign employees from another district to perform work routinely done by employees with seniority on the district without violating the seniority provisions of the Agreement, mandating monetary relief regardless of whether the Claimants were fully employed. See also Third Division Awards 10125, 24576, 28852, 29205, 29313, 30076, 30409, 31228, 31292, 31569, 31570. Based on all of the foregoing, these claims are likewise sustained, with compensatory damages calculated in the manner set forth in Third Division Award 32421.

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 24th day of October, 2001.