

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 36291
Docket No. MW-35682
02-3-99-3-619

The Third Division consisted of the regular members and in addition Referee Richard Mittenthal when award was rendered.

PARTIES TO DISPUTE: (**Brotherhood of Maintenance of Way Employees**
(**Union Pacific Railroad Company** (formerly 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 Union Pacific Railroad employee P. C. Peterson to perform flagging duties and responsibilities in the vicinity of 4th South Street in Salt Lake City, Utah commencing May 4 through 6, 1998 to the exclusion of Section Foreman J. R. Edwards (System File D-98-30/11498009 DRG).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. R. Edwards shall now ‘ . . . be compensated an equal and proportionate share of all hours worked by Union Pacific employee P. C. Peterson on this flagging assignment commencing from Monday, May 4, 1998, through Wednesday, May 8, 1998.”

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.

Sometime prior to this dispute, the Denver & Rio Grande (DRG) was merged into the Southern Pacific which was in turn merged into the Union Pacific (UP). This dispute arose in early May 1998 in what was then DRG territory, its Utah Division. That territory was then covered by a DRG/BMWE Agreement. Not until December 1998 was this territory, and its employees, placed under the jurisdiction of the UP/BMWE Agreement.

A contractor, Wasatch Constructors, was rebuilding a portion of Interstate Highway 15 in Salt Lake City. Management apparently had an obligation to the contractor to provide flagging services. It attempted to fulfill that obligation on May 4 through 6 by asking some DRG employees to serve as Flagmen. No one volunteered and the Carrier chose not to assign any of them to Flagman work. Instead, it got a UP employee to do this work. He had no seniority rights under the DRG/BMWE Agreement then in effect.

The Organization complained that the assignment of DRG work to a UP employee was a violation of various Rules in the DRG/BMWE Agreement. Rule 6 stated, among other things, that "... seniority rights of all employees shall be confined to the seniority district and subdepartment where employed."

This issue has arisen time and again in the parties' relationship. For example, Third Division Award 30408 plainly establishes "... the right of employees to work performed within their own seniority district, except where other Rules provide to the contrary." And Third Division Award 20410 also held that the Carrier cannot ordinarily assign work within a given seniority district "... to its own forces outside the seniority district." The Carrier must, in short, respect seniority district lines. It failed to do so here. The Flagman work was in a DRG/BMWE Seniority District, namely, the Utah Division, Seniority District No. 3 between mileposts 679.5 and 782. However, the Carrier assigned this work to a UP employee who was not only from a different Seniority District but from a different bargaining unit.

Several points should be emphasized. The Carrier recognized initially that this was indeed DRG work and offered the assignment to several DRG employees. There

were no volunteers. Nothing in the evidence reveals how many employees received this offer. Nor is there anything in the record to suggest that the Claimant, received this offer. The absence of volunteers, given these circumstances, can hardly justify the failure to honor seniority district lines. Even ignoring the possibility of assigning a DRG employee to the necessary Flagman work, it does not appear that the Carrier exhausted the possibility of locating a DRG volunteer. Such work is regularly done by BMW employees. In the words of the Director of Engineering Quality Management, the "... bulk of the work of flagging is being done by B&B Forces, ..." that is, BMW people.

AWARD

Claim sustained.

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 28th day of October 2002.