

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36598
Docket No. MW-35510
03-3-99-3-412**

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman 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 employe L. Simmons from Gang 2223 of the ‘GWS’ seniority territory to perform routine Maintenance of Way work on the Dallas, OKT, Ft. Worth and Choctaw Subdivisions on March 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 22, 23, 24, 25, 26, 29, 30, and 31, 1998 instead of assigning Trackman M. E. Brooks (System File Y98414/1138987 MPR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant M. E. Brooks shall now be compensated for one hundred eighty-four (184) hours of pay at his respective straight time rate of pay.”**

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 Board reviewed this claim and finds that it is almost identical to that which we reviewed in Third Division Award 36597. It involves work performed by a Trackman holding seniority on Gang 2223 in the GWS seniority territory, who is required by the Carrier to cross into the Claimant's MP territory to perform maintenance of way work. This claim differs only as to the various territories that were crossed into and the dates of claim.

Accordingly, we find no essential difference from that which we previously considered. The Board holds that the Agreement has been violated and sustains Part 1 of the claim. The Carrier is put on notice to properly apply the Agreement to assure against any future violations. The Board denies Part 2 of the claim, in that it stands as fact that the Carrier was permitted to engage in this disputed action for years without complaint from the Organization. In view of having acquiesced to this practice, the Organization cannot now be compensated for the violation.

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 16th day of June 2003.