

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37278
Docket No. MW-36402
04-3-00-3-647

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(The Burlington Northern and Santa Fe Railway Company
((former Burlington Northern Railroad Company)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it directed the employees assigned to System/Regional Gangs RP-11 and RW-11 to perform pre-programmed work (rail relay) scheduled and assigned to System/Region Gangs RP-10 and RW-10 at locations between Mile Posts 2.10 and 191.26 beginning September 14, 1998 and continuing through October 13, 1998 instead of the employees assigned to System/Region Gangs RP-10 and RW-10 of which all positions were abolished on October 6, 1998 (System File NNPW-H-136/11-99-0100 BNR).
- (2) As a consequence of the violation referred to in Part (1) above, the Claimants* listed below shall each '... receive an equal and proportionate share of all hours worked by the named district crews in the performance of this work, a total of two hundred (200.0) hours pay for each Claimant. Pay is to be computed at Claimants' respective rates of pay.'

*J. Klemin

A. Silva

J. Moe

L. Brouchard

C. Gohman

J. Cotton

G. D. Moran

J. Dester

D. Kinstad

C. M. Rath

K. L. Monson

B. L. Fruhling

B. Johnson	A. C. Watson	V. L. Baungardner
B. A. Snyder	J. P. Almanza	N. W. Holte
J. D. Hedges	M. A. Rogers	R. Calusnitzer
O. H. Thompson	W. W. Edwards	E. Wald
L. D. Thompson	D. Cross	D. R. Suek"
M. M. Kubis	L. R. Gard	
B. J. Golie	T. C. Flaten"	

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 facts of this claim are not in dispute. When Gangs RP-10 and RW-10 experienced increased traffic on the lines in Seniority District 17 that they were programmed to work for the 1998 season, the Carrier reassigned 24 projects planned for 25 days of work to Gangs RP-11 and RW-11, which gangs were also programmed to work in District 17. The Carrier provided an explanation of its business reasons for shifting the work to have it completed before cold weather became a limiting factor. The Organization never effectively refuted the Carrier's reasons on the property.

The Organization based its claim on Article XVI, Section 3(a) of the 1996 National Agreement as well as the Agreement Rules pertaining to seniority rights. Careful review of the cited provisions fails to reveal any explicit restrictions that prohibited the Carrier from exercising its managerial discretion as it did. Article

XVI, Section 3(a) only specifies what information must be contained in the Carrier's annual notice regarding the establishment of Regional/System Gangs for the ensuing work season. In addition, the Carrier asserted that Rule 7D of the parties' Agreement rather clearly prevents the planned work schedule contained on the position bulletins for the respective gangs from constituting a reservation of the work to any specific gang. It reads:

"Any information contained on the bulletin concerning the anticipated schedule of work for the gang shall be for information only, shall be subject to change without notice, and shall not constitute a guarantee that the gang will perform the work specified or at the time and place specified."

Carrier's Rule 7D assertion was never effectively refuted on the property. Moreover, the Carrier's October 30, 1997 notice letter for the 1998 work season contained the following advisory about deviations from the work plan:

"In light of the fact that these plans for regional and system-wide gangs for the 1998 work season cover work that will actually be performed from 6 months to more than a year in the future, the attached detailed plans may be affected by changes in levels of business, changes in train schedules to meet customer needs, weather conditions, equipment failure or other production problems, emergencies, acts of God, as well as other unexpected factors. Therefore, prior to the actual start of the work season and throughout the work season the anticipated time schedules of the work may need to be shortened or lengthened, certain planned work locations may have to be deleted and others substituted or added, the amount of work planned at certain locations may be changed, and the indicated sequence of the work may be altered. . . ."

The propriety of the foregoing deviation advisory has been the subject of three prior Awards of Special Boards of Adjustment. All have found the advisory to be in harmony with the purpose of such regional and system gangs and not in violation of any Agreement provisions so long as any actual deviations from the plan are supported by legitimate business reasons. As previously noted, the reasons

provided by the Carrier on the property have been properly established as fact in this dispute.

On this record, the Organization has not satisfied its burden of proof to establish any violation of the applicable Agreement language.

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 5th day of November 2004.