

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 41062  
Docket No. MW-39072  
11-3-NRAB-00003-050513

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

(Brotherhood of Maintenance of Way Employees Division -  
( IBT Rail Conference

**PARTIES TO DISPUTE:** (

(Union Pacific Railroad Company (former Southern  
( Pacific Transportation Company [Western Lines])

**STATEMENT OF CLAIM:**

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier called and assigned UP Salt Lake City Subdivision Seniority district employees to perform SPW Track Welding Sub-department work (move Gang 8921 equipment, crew cab truck and boom truck) on SPW seniority territory from Nogales, Arizona to Klamath Falls, Oregon on June 10 and 11, 2004, instead of Gang 8921 employees J. Villalovoz and L. Martinez (Carrier's File 1408327 SPW).
- (2) As a consequence of the violation referred to in Part (1) above, Claimants J. Villalovoz and L. Martinez shall now each be compensated for twenty-three (23) hours at their respective time and one-half rates 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 instant dispute is a work jurisdiction claim within the Organization. Although both parties included additional information in their Submissions, the Board confined its consideration, as it must, to only those facts and contentions that were properly part of the evidentiary record developed by the parties during their handling of the claim on the property.**

**The Claimants are two of the members of System Welding Gang 8921. During the relevant timeframe, the gang was working a compressed schedule that called for them to work June 1-8 and 16-23. Their rest days were the blocks of days between June 9-15 and June 24-30. They completed their work at Nogales, Arizona, on June 8. Nogales is on the Arizona-Mexico border. The gang was next due to report for work in Klamath Falls, Oregon, several states away, on June 16, 2004.**

**The trucks and equipment assigned to the gang needed to be relocated during the block of rest days. The Carrier initially planned to have it hauled by system truck and/or rail. However, the system trucks were apparently unavailable for at least part of the move. The claim is only for the move from Salt Lake City to Klamath Falls. The move from Nogales to Salt Lake City is not part of the claim.**

**Both Claimants departed Nogales on June 8 and began their days off. According to the record, Claimant Martinez had worked some 93 hours during June 1-8. Claimant Villalovo worked some 94 hours during the same period. Claimant Villalovo departed for his home in Tracy, California, which is 908 miles from Nogales. Claimant Martinez similarly left Nogales for his home in South Gate, California, which was 575 miles from Nogales.**

**The move of the gang vehicles began after both Claimants departed Nogales for their respective drives home. The record does not specify the precise time when or how the equipment was moved from Nogales to Salt Lake City on June 9. As previously noted, this part of the overall move is not part of the claim.**

**It is undisputed in the record that both Claimants were subject to the Hours of Service Act. Because of the hours they both worked during June 1-8, neither could legally drive a commercial vehicle until after they had a minimum of 34 consecutive hours off-duty. Moreover, they were apparently at their homes in California, both approximately 700 miles from Salt Lake City, on the morning of June 10 when the equipment left that intermediate point for Klamath Falls.**

**The Carrier challenged both the right of the Claimants to perform the driving in question as well as their practical ability to do so. In this latter regard, the Carrier asserts it was impossible for the two Claimants to do the driving for which they seek compensation.**

**It is undisputed that all of the equipment movement was performed on the rest days of the gang and no welding work was performed with any of the equipment during that time. The move was a pure relocation of the Carrier's equipment.**

**On the property, the Organization cited seven different Rules that were allegedly violated by the Carrier's action, i.e., Rules 1, 5, 19, 25, 26, 28, and 47. In its Submission, however, the Organization literally changed the Rules. In its Submission, the Organization cited Rules 1, 2, 3, 5, 25, 28, and 65.**

**The Carrier's Submission provided the text of the Rules cited by the Organization during the on-property handling. The Board carefully reviewed them. That review does not reveal any provisions that explicitly reserve the tasks associated with equipment relocation to the gang or the Claimants. With respect to past practice, there is no evidence whatsoever that the gang members have moved their equipment great geographical distances during days off, like here, ever before. Moreover, it is undisputed that somebody else moved the equipment from Nogales to Salt Lake City without any objection.**

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**Under the circumstances, the Board is compelled to find that the Organization failed to fulfill its sole burden of proof to demonstrate a violation of the Agreement. Accordingly, the claim must be denied.**

**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 23rd day of August 2011.**