

AWARD NO. 10
CASE NO. 10

Brotherhood of Maintenance of Way Employees
and
Kansas City Southern Railway Company

DECISION: Claim dismissed

"Claim on behalf of KCS - MSRC/SRC employees, W. N. Davis, M. Steele, M. Tims, R. J. Brown, W. Brown, J. L. Gardner, C. M. Griffin, A. Johnson, R. L. Miller, E. Parkman, C. Sanders, and J. Woods because the Carrier violated the current Work Agreement including, but not limited to Rules(s) 13 - Seniority Districts, and Rule 23 - Mobile Gangs and Expenses, paragraph (a) and (i) when it required the above named claimants to report and perform work beyond the limits of their respective seniority districts.

As a consequence of this violation of Rule(s) 13 - Seniority Districts, and Rule 23 - Mobile Gangs and expenses, paragraph (a) and (i), the above named employees should be allowed one (1) hour pf pay per employee at their respective time and one-half rate for each day this violation occurred and reimbursed by the company for the use of their automobiles, for thirty miles each day at the allowable IRS rate then in effect. As of the date of this claim that totals thirty-six (36) hours of pay at their respective time and one-half rate per employee, plus mileage of three-hundred-thirty-four dollars and eighty cents (\$334.80) per employee for each day of commuting the round trip into the KCS territory.

Additionally, each employee named should be allowed one (1) hour of pay at their respective time and one-half rate and thirty (30) miles per day at allowable IRS rate for each day worked thereafter until this violation is corrected.”

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

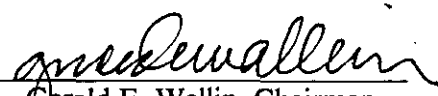
The Carrier does not deny that the Claimants were used to perform work outside of the limits of the seniority territory. It maintains, however, that this was done pursuant to a verbal agreement

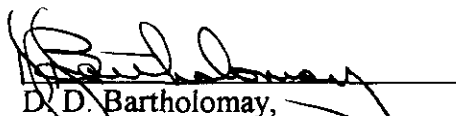
between the Carrier and the two applicable General Chairmen. The General Chairman representing the Claimants disputed the existence of such an agreement. No claims, however, emerged from either the employees in whose seniority district the work was performed or their General Chairman to allege any loss of work opportunity.

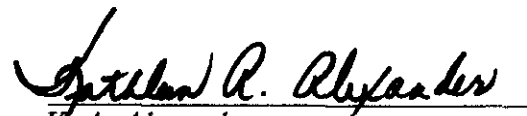
If there was no such verbal understanding, one would expect that such claims would have been filed to protest the importation of manpower across seniority district lines. In addition, the record contains a letter from the Carrier official who represented the Carrier in developing the verbal agreement.

The record in this matter confronts the Board with an irreconcilable dispute of material fact concerning the existence of the verbal agreement. It is well settled that we lack the authority to resolve such factual disputes. Under the circumstances, therefore, we have no choice but to dismiss the Claim.

AWARD: The Claim is dismissed.


Gerald E. Wallin, Chairman
and Neutral Member


D. D. Bartholomay,
Organization Member


E. A. Alexander,
Carrier Member

DATE: 11-5-02