

PUBLIC LAW BOARD NO. 6301

AWARD NO. 39
CASE NO. 39

PARTIES TO
THE DISPUTE:

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

ARBITRATOR: Gerald E. Wallin

DECISION: Claim denied.

STATEMENT OF CLAIM:

Claim on behalf of KCS-MSRC/SRC employee(s) N. E. Taylor, R. J. Brown, and M. Evans because the Carrier violated the current Work Agreement, including, but not limited to recent Agreement Extension dated April 16, 2002, specifically Article 1-Wages, Sections 1 and 5, when it arbitrarily excluded the above named claimants from payment of their respective lump sum payments.

As a consequence of this violation ... the above named claimants should be allowed their respective lump sum payments of one-fourth ($\frac{1}{4}$) of three (3) percent of the employee's respective compensation for 2001 less \$100.00 health and welfare offset plus interest charges based on a daily periodic rate of .0271% (Annual percentage Rate of 9.9%) calculated by multiplying the balance of the claim by the daily periodic rate and then by the corresponding number of days over the initial thirty days from April 16, 2002, that this claim remains unpaid.

FINDINGS OF THE BOARD:

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 instant Claim raises the question of which labor agreement covered the Claimants during the relevant time frame. The present Carrier entity resulted from the combination of the former Kansas City Southern Railway Company ("KCS") and other railroad properties, one of which was the former MidSouth Rail Corporation ("MidSouth"). The acquisition and merger involving the MidSouth were approved in 1993 Finance Docket No. 32167 and 1994 Finance Docket No. 32405. At the time of the merger, the labor agreements of the former KCS and the other properties except the MidSouth were products of national bargaining. Because it resulted from local bargaining, the labor agreement on the MidSouth contained significantly different rates of pay and work rules. It remained as a stand-alone labor agreement for the former MidSouth territory while the other properties were brought under the umbrella of the former KCS agreement.

Sometime after the merger, the Carrier sought to use System Production Gangs ("SPG") throughout its merged properties, including the MidSouth territory, for large-scale tie and rail renewal work. The terms of a SPG agreement were obtained by means of arbitration pursuant to the New York Dock Conditions. The resulting arbitrated agreement provided, in paragraph 2, that such production gangs "... shall be governed by the collective bargaining agreement between ..." KCS and the Organization.

The MidSouth agreement was amended via local negotiations effective April 16, 2002. The amendment provided for lump sum payments for employees working under that agreement in lieu of wage increases. This payment arrangement was established to bring the differing KCS and MidSouth pay rates into parity over a period of some four years. The pertinent payment provisions of the MidSouth agreement are as follows:

Article I - Wages

Section 1 - First Lump Sum Payment

On each of the dates, January 15, April 1, July 1 and October 1, 2002 respectively, each eligible employee will receive a lump sum payment in the amount produced by the following computation: one-fourth ($\frac{1}{4}$) of three (3) percent of the employee's compensation for 2001 less \$100.00 health and welfare offset.

* * *

Section 5 - Eligibility for receipt of Lump Sum Payments

The lump sum payments provided for in this Article shall be paid to each employee *subject to this agreement* who has an employment relationship *as of the date such payments are payable* and who received compensation in the preceding calendar year * * *

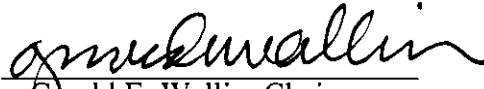
(Italics supplied)

Prior to January 15, 2002, Claimants all held positions under the MidSouth agreement on Gang 152. Effective with the end of their tours of duty on January 11, 2002, their positions were abolished. They exercised their seniority, which derived from their MidSouth service, to Gang 506, which was governed by the SPG agreement. They began working on Gang 506 on January 15, 2002.

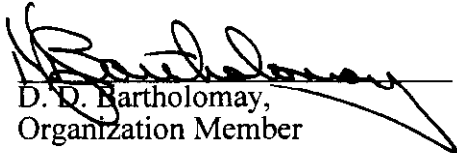
After careful review of the record developed by the parties during their handling of the Claim on the property, we must find in favor of the Carrier's position. While it is true that Claimants all had a continuing employment relationship with the Carrier and had received compensation in the preceding calendar year, to be eligible for the lump sum payment due on January 15, 2002, the

Claimants had to be working in positions *subject to* the MidSouth agreement. They were not. Instead, on that critical eligibility date, they had assumed positions subject to the KCS SPG agreement. This change of positions disqualified Claimants from entitlement to the lump sum payments sought.

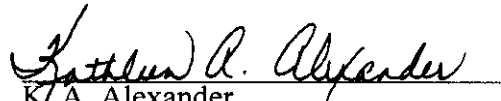
AWARD: The Claim is denied.



Gerald E. Wallin, Chairman
and Neutral Member



D. D. Bartholomay,
Organization Member



K. A. Alexander,
Carrier Member

DATE: June 18, 2003