

PUBLIC LAW BOARD NO. 6375

**Case No. 5
Award No. 5**

PARTIES TO DISPUTE: (**(Brotherhood of Maintenance of Way Employees
(Union Pacific Railroad Company**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it assigned surfacing gang positions under the Rail Gang Roster 5600 on the Del Rio Subdivision and when it assigned the surfacing gang to perform track surfacing work on the Palestine Subdivision beginning October 9 through November 14, 2000 and continuing instead of Palestine Division Seniority employees R. Foley, J. Bartek, W. Drews, J. Jaurez, R. Slaughter, and O. Hennigan (System File MW-01-43/125902 MPR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants R. Foley, J. Bartek, W. Drews, J. Jaurez, R. Slaughter, and O. Hennigan shall now each be compensated for two hundred sixteen (216) hours' pay at their respective straight time rates of pay and one hundred sixteen (116) hours' pay at the respective time and one half rates of pay for the period October 9 through November 14, 2000 and for all straight time and overtime hours accrued by the aforesaid surfacing gang in the performance of track surfacing work on the Palestine Seniority Division beginning November 15, 2000 and continuing.”**

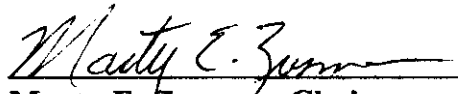
FINDINGS:

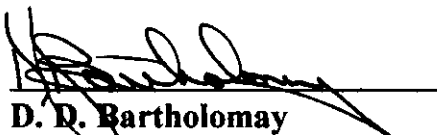
This Board, after hearing upon the whole record and all the evidence finds that the Carrier and the Employee involved in this dispute are respectively, Carrier and Employee within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over the dispute involved herein; and, the parties were given due notice of hearing thereon.

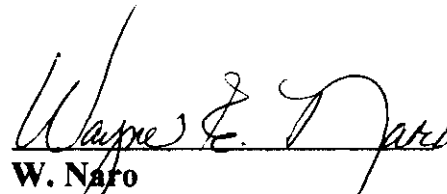
The Board has fully reviewed the factual base of this dispute. We find that the claim parallels that which was decided in our Award No. 4 of this Board. Our study indicates that for all of the same reasons that we discussed in the prior Award, we hold again that "there is no proof in this record that the Carrier is restricted from using a system gang to perform surfacing work as herein disputed ..." Having failed to meet its burden of proof, this instant claim must be denied.

AWARD:

Claim denied.


Marty E. Zusman, Chairman
Neutral Member


D. D. Bartholomay
Organization Member


W. Naro
Carrier Member

Date: 5-27-03