

PUBLIC LAW BOARD NO. 6676

**PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
TO)
DISPUTE) NORFOLK AND SOUTHERN RAILWAY COMPANY**

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- 1. The Agreement was violated when the Carrier failed and refused to allow Crane Operator Doug Adams a \$1,000 lump sum payment when it required him to work on two or more managerial territories on February 28, 2001.**
- 2. As a consequence of the violation referred to in Part (1) above, Crane Operator Doug Adams shall now be allowed the \$1,000 lump sum payment. (Carrier File: MW-DECR-01-50-LM-458)**

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that the parties herein are 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 contractual agreement provisions, and positions of the parties relative to same, that give rise to the dispute here at issue are as already reviewed in Case No. 1, Award No. 1, of this Board. That is, interpretation and application of the Seniority Realignment Agreement of February 21, 2000 and the September 26, 1996 National Agreement involving non-DPG gangs that work between two or more managerial division territories being entitled to a lump sum payment under certain prescribed conditions.

In the instant case, the Organization asserts that Claimant, a Crane Operator on the Illinois Managerial Division, is entitled to the lump sum payment as a result of having had to pick up the crane that he was to operate on February 28, 2001 off tracks in the South Yard at Lafayette, Indiana, and then move the crane over the rail back to the North Yard in Lafayette.

The North Yard is a part of the Illinois Managerial Division, whereas the South Yard is within the Lake Managerial Division. After reporting for duty, Claimant

drove from his headquarters at North Yard to the South Yard. The crane had been shipped from Decatur, Illinois to Lafayette, Indiana, and was set off in the South Yard instead of the North Yard. In this latter regard, the Organization says that the Carrier, instead of being in a hurry to get the crane to the North Yard, should have waited and had it delivered with a switch engine. Further, the Organization says that Claimant spent five hours at South Yard preparing the crane for movement to the North Yard.

It is the position of the Carrier that Claimant is not entitled to the lump sum payment in a contention that Claimant did not perform any tasks in maintaining or repairing track, or perform any other work for the benefit of the Lake Managerial Division. The Carrier says that Claimant merely prepared the crane to tram, i.e., checking oil and fuel levels, starting it, checking brakes, and then moved or trammed it over to the North Yard in a non-work mode, where he performed work for the benefit of the Illinois Managerial Division. The picking up and movement of the crane, the Carrier argues, did not constitute the performance of work across two or more managerial divisions that could trigger payment of the lump sum.

The Carrier also maintains in argument to the Board that Claimant's Illinois Division Crane Operator assignment was not established as a Non-DPG assignment to work over the separate managerial division territories, and that prior to the Realignment Agreement that the performance of the type of service at issue between managerial divisions was performed without penalty.

In the opinion of the Board, notwithstanding that we do not find the record sufficiently joined to determine whether the assignment held by Claimant on the Illinois Division was established as a part of a non-DPG gang, it seems evident that the work or service in controversy required of Claimant in picking up and moving the crane from one yard in close geographical proximity to another yard, may not be properly viewed as "work" between two or more managerial division territories as contemplated by the Realignment Agreement.

The work or service required of Claimant was not primarily for the benefit of an adjacent managerial division, nor does a mutuality of interest appear to have existed involving operation of the crane for work purposes between two managerial divisions. The picking up of the crane from an adjacent yard, albeit a yard in a different managerial division, was clearly solely and incidental to Claimant's performance of work on his own assignment on the Illinois Managerial Division.

Accordingly, in view of the facts and circumstances of record in this particular case, and the past practice by the parties over the years with respect to this type of service or task not having constituted a basis for a penalty payment, the claim will be denied.

AWARD:


Claim denied.



Robert E. Peterson
Chair & Neutral Member



Dennis L. Kerby
Carrier Member


Donald D. Bartholomay
Organization Member

Norfolk, VA
October 28, 2004