

PUBLIC LAW BOARD NO. 6676

PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
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 Foreman C. L. Short, Assistant Foreman T. M. Melvin, Jr., Welder Helper H. D. Taylor, Jr., and Trackmen B. W. Hager and L. P. Shrader the \$1,000 lump sum payment when it required them to work on two or more managerial territories on January 9 and 17, 2002.
2. As a consequence of the violation referred to in Part (1) above, the Claimants shall be allowed the \$1,000 lump sum payment.
(Carrier File: MW-BLUE-02-04-LM-021)

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 claim as filed on the property in this case contended that on January 9, 2002 the Claimants were assigned the task of installing new insulated joints on Main Line Track One at the east end of Bluefield Yard, between MP N 360.3 and MP N 360.2, and that on January 17, 2002 Claimants installed new insulated joints on Main Track Two at the same locations. It was said in the claim that the new joints were installed 59 feet east of their former location to accommodate the relocation of the westward signal. It was asserted that the work required of Claimants was beyond the eastern boundary of the Pocahontas Division, i.e., MP N 360.5, and that pursuant to a Memorandum of Agreement dated December 1, 1983 and Rule 43 II(f) that Claimants were entitled to an allowance of \$10 each week account worked off the Roadmaster's District and an additional \$10 account assigned to work over the Eastern Region under Rule 43 II(f)(b). The claim letter then went on to state:

In view of the above, we are requesting that Claimants Short, Melvin, Hager and Shrader be paid \$40.00 each and Claimant Taylor be paid \$20.00 for working off roadmaster's district and/or home division on January 9 and 17, 2002.

The Carrier denied the claim, asserting that Claimants were neither required to perform work off their Roadmaster District nor off the limits of the Pocahontas Division.

In subsequent appeal of the Carrier denial, it was urged upon the same instance at the same location that Claimants were entitled to a \$1,000 lump sum payment under the terms of the Seniority Realignment Agreement of February 21, 2000.

There is no question, as argued by the Carrier, that in amending the nature of the claim it became substantially changed from the manner as originally filed. This is contrary to the intent of Section 3, First, of the Railway Labor Act, as amended, which requires in pertinent part that claims "be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes." It thus follows that the Board has no jurisdiction under Section 3, First, of the Railway Labor Act to pass upon the validity or merits of the claim as unilaterally amended.

Under the circumstances of record, the claim before us not being the same claim in substance and in fact as originally filed, it will be dismissed for lack of Board jurisdiction.

AWARD:


Claim dismissed.



Robert E. Peterson
Chair & Neutral Member



Dennis L. Kerby
Carrier Member



Donald D. Bartholomay
Organization Member

Norfolk, VA
October 22, 2004