

**BEFORE
PUBLIC BOARD No. 7097**

**Award No. 6
Case No. 6**

BROTHERHOOD OF MAINTENANCE OF WAY)	
EMPLOYES)	
	)
vs.)	PARTIES TO DISPUTE
	)
UNION PACIFIC RAILROAD COMPANY)	

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned Seniority District T-4 employe S. Roberts to perform track foreman duties in connection with cross-buck replacement on Seniority District T-2 territory beginning June 23, 2003 and continuing, instead of T-2 Track Foreman A. Reed (System File 2-RM-9469T/1376436 CNW).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant A. Reed shall not “*** be compensated for all hours of work that the seniority district T-4 has spent working on seniority district T-2 work, including any overtime, at the applicable rates of pay.”

OPINION OF THE BOARD:

This Board, upon the whole record and all of the evidence, finds and holds that the Employe and Carrier involved in this dispute are respectively Employe and Carrier within the meaning of the Railway Labor Act, as amended, and that the Board has jurisdiction over the dispute involved herein.

At all times relevant to this dispute, Claimant held seniority as a Track Foreman in the T-2 Seniority District. The Organization contends that beginning June 23, 2003 and continuing, Seniority District T-4 employee, Track Foreman S. Roberts, pursuant to assignment by the Carrier, “coordinated locations for the replacement of railroad cross-buck

warning signs at road crossings for a cross-buck replacement gang on the T-2 Seniority District,” and asserts that this improperly deprived Claimant of work opportunities. The evidence offered in support of this is Claimant’s statement that “[o]n various dates I observed Roberts coordinating locations for T-2 districts.” In response, the Carrier offers the Labor Distribution Report and the statement of the Track Supervisor to show that District T-4 Track Foreman S. Roberts was assigned only to perform the task of arranging utility locates for cross buck replacements within Seniority District T-2 and that he performed this work while reporting to the Boone, IA, office at MP 202.46 within his own District T-4 seniority territory. Although the Organization asserts that the Labor Distribution records are inaccurate, the Carrier contends that the Organization has failed to prove that Roberts performed work that was exclusive to the T-4 district.

The Organization is correct that ordinarily, as observed in Third Division Award 30797, “work within a specific seniority district must be reserved for employees holding seniority in that district and cannot be turned over to employees of another district.” However, in this case, the Board finds that the Organization, as the moving party, has failed to prove that the disputed work was in fact T-4 Seniority District work.

This Board agrees with the Carrier that the disputed work was managerial planning and scheduling work outside the exclusive jurisdiction of the Organization. The Scope Rule states,

These rules govern the hours of service and working conditions of all employees herein named in the Maintenance of Way Department and subdepartments thereof (not including supervisory forces above the rank of foreman) . . .

As noted by Public Law Board 6402 in its Award 48, the assignment of work outside its scope is not governed by the Agreement. The Organization has failed to refute the Carrier’s contentions in this regard.

Instead, the Organization contends that because the work, even if managerial, was performed on the T-2 District, it should have been performed by an employee holding T-2 District seniority. Even if Agreement seniority provisions could govern the allocation of work outside the Agreement’s Scope Rule, a position that this Board does not adopt, the Organization has failed to establish the facts necessary to prove where the work was performed. The Labor Distribution Reports say that Roberts reported to the Boone, IA office, on the T-4 District, and left from that office at the end of his workday. The

conference notes indicate that Roberts did the disputed work without leaving that office. In opposition, the Organization asserts, without corroborating evidence, that the Labor Distribution records were inaccurate, and presents Claimant's written statement that he observed Roberts coordinating locations for T-2 districts, but the statement does not say where Claimant and Roberts were at the time. Even giving the Organization and Claimant the benefit of the doubt that his statement implies that Roberts was on T-2 territory at the time he performed the work, at best, there is an irreconcilable difference as to these facts. It is not the place of this Board to resolve such disputes of fact, and the Organization, as the moving party, must be held to have failed to prove its claim. See, e. g., Third Division Awards 29533, 30798, 35855.

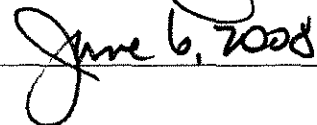
Thus, viewing the entire record, and without reaching the parties' other contentions, the Board dismisses the claim due to the irreconcilable dispute over material facts.

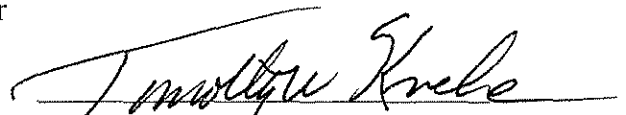
AWARD

Claim denied.


Lisa Salkovitz Kohn
Neutral Member


Carrier Member

Dated: 


Organization Member