

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 Foreman C. E. Evans, Mason D. A. Sorrell and Machine Operators P. Boggs, Jack D. Lore and Jim D. Lore the \$1,000 lump sum payment when it required them to work on two or more managerial territories on different dates during calendar year 2001.**
- 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-FTW-01-127-LM-571)**

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 thereto, 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.

Although it is alleged that Claimants, employees assigned to bulletined jobs on the Lake Managerial Division, were required to work on the Pocahontas Managerial Division, the record shows that no challenge was made to the Carrier defense as made on the property that they never left the confines of the Lake Managerial Division on the dates of claim, with the sole exception of Claimant Lore. Further, as the Carrier submits, nothing of record shows what work was allegedly performed

on the Pocahontas Managerial Division by Claimants on the dates of claim. In fact, Claimant Evans was shown to have been on vacation on the two dates that he was alleged to have worked on the Pocahontas Managerial Division.

The petitioners having failed to meet a necessary burden of proof with respect to a showing that work was, in fact, performed on two managerial division territories, the Board has no alternative but to deny those claims.

As concerns Claimant Lore, there is no question that he left the Lake Managerial Division and entered the Pocahontas Division to obtain a truckload of ballast for exclusive use on the Lake Managerial Division. In this respect, the Carrier says that Claimant Lore drove a truck to Kenova, where other employees loaded ballast from a stockpile into the truck, and then drove back to the Lake Managerial Division. The Carrier submits that Claimant went on and off duty at his fixed headquarters location on the Lake Managerial Division and performed no work for the benefit of the Pocahontas Managerial Division.

The Carrier also argues that Claimant could have picked up the ballast at any location, even from a private vendor, without activating the provisions of Article V(C) of the Realignment Agreement. Thus, the Carrier contends that Claimant Lore being present on one day on the Pocahontas Managerial Division to pick up material does not support the claim that he did work on two or more managerial divisions as contemplated by the Agreement.

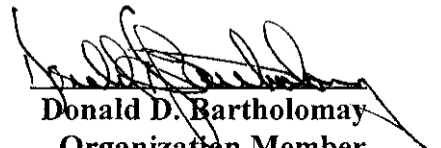
For the same rationale as set forth by the Board in disposition of Case No. 4 (Award No. 4), we do not find the work or service in controversy required of Claimant Lore in driving to an adjacent managerial division and returning to his home managerial division with a truckload of ballast to have constituted "work" between two or more managerial division territories as contemplated by the Realignment Agreement.

AWARD:

Claims denied.


Robert E. Peterson
Chair & Neutral Member


Dennis L. Kerby
Carrier Member


Donald D. Bartholomay
Organization Member

Norfolk, VA
October 28, 2004