

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 Machine Operator C. K. Swathwood and Trackmen C. C. Williams and L. K. Martin the \$1,000 lump sum payment when it required them to work on two or more managerial territories on different dates during the 2001 calendar year.**
- 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-01-37-LM-559)**

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 position 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.

It is the contention of Claimants that they were required to work their bulletined positions on the Pocahontas Division on other managerial division territories as follows:

**Machine Operator Swathwood – Virginia Division, October 23, 2001
Trackman Williams – Lake Division, March 20, 2001
Trackman Martin – Lake Division, March 20, 2001**

Contrary to the locations at which Claimants say they worked on the dates of claim, the Carrier offers that their work assignments were as follows:

Machine Operator Swathwood – Drove truck to RMY (Roadway Material Yard), located within the City of Roanoke, Virginia, and picked up track material for use by a rail gang on the Pocahontas Division, October 23, 2001

Trackman Williams – Portsmouth Yard, Pocahontas Division, March 20, 2001

Trackman Martin – Portsmouth Yard, Pocahontas Division, March 20, 2001

The Carrier says that the RMY at Roanoke, Virginia is not a part of the Virginia Managerial Division as claimed by Claimant Swathwood and the Organization, but is rather a stand-alone system facility, with its own management structure, that provides track material to all of its managerial divisions.

The Organization disputes the Carrier contention, offering that a map attached to Side Letter No. 6 of the Realignment Agreement shows Roanoke to be a part of the Virginia Division, and that the Carrier, in trying to exclude it from the Virginia Managerial Division, is disingenuous. Furthermore, the Organization asserts, whether NKP employees received seniority in the RMY, or that it has its own management structure, is irrelevant to this dispute in that it is the physical location of the RMY, and any work performed at Roanoke is work that belongs to the Virginia Managerial Division.

In study of the record, the Board is not persuaded that merely because a particular geographical location is shown on a map that it necessarily follows that all Carrier facilities at that particular location must be recognized as falling within the jurisdiction of a managerial division. Certainly, the Carrier has a right to operate a system supply facility from within the confines of a managerial division without that facility becoming a part of a particular seniority district.

The Board is also not convinced by further Organization argument that since the Agreement does not say that the “work” has to be track work that it may be held to have intended any type of work performed outside the confines of a managerial division territory.

For the same rationale as set forth by the Board in disposition of Case Nos. 4 and 5 (Award Nos. 4 and 5), we do not find the work or service in controversy required Claimant Swathwood in driving to the RMY to pick up and return with track material for use by a rail gang on his own assigned Pocahontas Managerial Division

to have constituted "work" between two or more managerial division territories as contemplated by the Realignment Agreement.

As concerns Claimants Williams and Martin, the Carrier says that they solely worked within Portsmouth Yard on the date of claim, and that both prior and subsequent to the Realignment Agreement Portsmouth Yard is identified as a part of the Pocahontas Managerial Division, as well as a part of Claimants' Ironton Section Gang Territory.

The Organization does not dispute that Portsmouth Yard is located within the Pocahontas Managerial Division. However, it asserts, albeit without probative support of record, that Claimants Williams and Martin allegedly worked west of the east end of a bridge at Vera, where the Pocahontas Managerial District ends and the Lake Managerial Division begins.

In the opinion of the Board, petitioners having failed to meet a necessary burden of proof with respect to a showing that any work to which they were assigned was, in fact, performed on two managerial division territories, the Board has no alternative but to deny the claims of Claimants Williams and Martin.

AWARD:

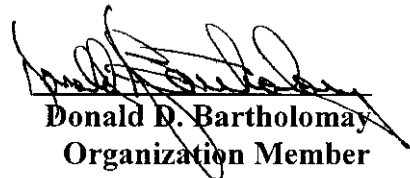
Claims denied.



Robert E. Peterson
Chair & Neutral Member



Dennis L. Kerby
Carrier Member



Donald D. Bartholomay
Organization Member

Norfolk, VA
October 28, 2004