

SPECIAL BOARD OF ADJUSTMENT NO. 1049

AWARD NO. 169

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

NORFOLK SOUTHERN RAILWAY COMPANY

(Carrier File MW-CN-04-07-BB-131)

Statement of Claim:

Claim on behalf of the members of SM-377 Smoothing Gang requesting that their positions be re-established as a mobile gang.

Upon the whole record and all the evidence, after hearing, the Board finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and this Board is duly constituted by agreement under Public Law 89-456 and has jurisdiction of the parties and subject matter.

AWARD

After thoroughly reviewing and considering the record evidence including the parties' presentation, the Board finds that the claim should be disposed of as follows:

BACKGROUND

At some point in calendar year 2000, Smoothing Gang SM-377 was abolished as a mobile gang and re-bid as a fixed headquartered gang located in Athens, TN. In April, 2004, the Organization maintained that SM-377, although abolished in 2000, had not experienced "any change in the work habits or locations since that time. This gang continues to work the same locations away from their headquarters as they did before the Carrier abolished it." Accordingly, the Organization requested that the Carrier re-establish this Gang's mobile status.

In response to the Organization's assertion, the Carrier responded by noting that since being re-bulletined as a fixed headquarter Gang, the Claimants began and ended their day at the Athens,

Tennessee headquarters more than 90% of the time. In addition, the Carrier noted that in those instances where the Gang may have been used away from their Athens, TN headquarters, they were afforded expenses pursuant to Rule 27. Throughout the exchange associated with this claim, the Organization repeated its assertions without substantive contrary evidence to dispute the Carrier's assertion.

DISCUSSION

In making a determination based on the facts herein, the Organization bears the burden of proof under the preponderance of the evidence standard. Accordingly, it is the Organization's burden to demonstrate that it is more likely than not that the record evidence supports their claim that the SM-377 Smoothing Gang, while re-bulletined, failed to deviate from its pre-bid work habits or locations. Respectfully, upon review of the record evidence, the Board finds a lack of evidence to overcome the Carrier's response to the instant claim. In this regard, it is significant that following the General Division Engineer's response, the Organization was unable to provide credible evidence to the contrary.

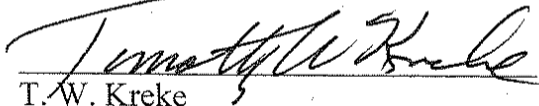
Given the foregoing, there is an insufficient basis in the record to support the Organization's claim.

CONCLUSION

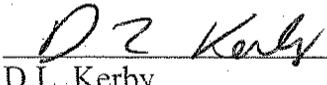
The claim is denied.



Dennis J. Campagna
Chairman and Neutral Member



T.W. Kreke
Organization Member



D.L. Kerby
Carrier Member

DATED: March 31, 2008