

SPECIAL BOARD OF ADJUSTMENT NO. 1131

AWARD NO. 1
CASE NO. 1

PARTIES TO
THE DISPUTE: Brotherhood of Maintenance of Way Employees

vs.

Union Pacific Railroad Company
(former Missouri Pacific Railroad Company)

ARBITRATOR: Gerald E. Wallin

DECISION: Claim denied

DATE: August 1, 2001

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier assigned Cotton Belt Railroad (SSW) *prior rights* Gang #7922 to perform routine track maintenance work on March 25, 26, 29, April 1, 4, 6, 7, 8, 9, 10, 12 and 15, 1999, within the Missouri Pacific Railroad (MPR) *prior rights* territory of Track Foreman E. L. Harris, Truck Operator J. E. Gordon and Trackman V. R. Norful between Mile Posts 463 and 497 of the Gurdon Branch (Carrier's File 1194531 MPR).
2. As a consequence of the violation referred to in Part (1) above, Claimants Harris, Gordon and Norful shall each be allowed an equal proportionate share of one hundred sixty (160) straight-time hours and seventy-one and one-half (71.5) overtime hours at their respective straight-time and overtime rates of pay, plus eight percent (8%) interest compounded monthly beginning May 18, 1999 until paid."

FINDINGS OF THE BOARD:

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

The instant Claim has its roots in the Carrier's merger with the Southern Pacific ("SP").

The parties negotiated an Implementation Agreement effective November 1, 1997 that operated to consolidate five former SP territories. It eliminated their separate collective bargaining agreements with the Organization and brought them all under the Union Pacific former Missouri Pacific ("UP") April 1, 1975 Agreement. It organized the former separate territories, including the former UP, into new seniority divisions that consolidated portions of the former territories geographically. The Implementation Agreement was signed by the Carrier and the five General Chairman of the UP and the former SP lines. The former St. Louis Southwestern Railroad Company ("SSW"), aka the Cotton Belt Railroad, was one of the former SP lines affected. The former territory of the SSW that is pertinent to this Claim was brought into the Arkansas seniority division.

The Implementation Agreement contains nineteen pages of provisions. The following selected provisions, which deal with the *prior rights* mechanism established by the Implementation Agreement, are particularly pertinent to the instant dispute:

II(B) Division Forces

(1) Seniority rosters will be created by dovetailing the former MKT, SPSCCL, OKT, SP(EL) and SSW employees assigned to positions on the territories as described in Section I above into the appropriate UP seniority rosters. Employees of the former UP will have an "M" placed next to their name. Employees of the former SP(EL) will have a "P" placed next to their name. Employees of the former SSW will have a "W" placed next to their name. Employees of the MKT will have a "K" placed next to their names. Employees of the OKT will have an "O" placed next to their names. SPSCCL employees will have a "C" placed next to their names.

* * *

(5)(a) Except as provided in Section II (5)(c), headquartered positions will be assigned first to employees holding prior rights on the territory where the position is headquartered. If a prior rights employee does not bid on the position, it will be assigned to the senior qualified employee on the consolidated division seniority roster. Neither failure to bid on such position nor bidding out of one's prior right territory will result in forfeiture of an employee's prior rights. Prior rights will be recognized when an employee applies for positions in higher classifications when no bids are received from employees with seniority in the classification.

* * *

When questions arose about certain aspects of the operation of the Implementation Agreement, the Carrier and the same General Chairmen signed a six-page letter containing twenty-nine questions and their agreed upon answers to those questions. Question No. 9 and its answer read as follows:

(9) Q. Under Section II(5)(a), the agreement refers to employees holding prior rights. What does the term prior rights mean?

A. Prior rights recognizes an employee's preference to identified positions located on the territory where the employee formerly held seniority prior to September 12, 1996.

The instant dispute raises a work jurisdiction issue under the Implementation Agreement. Although the on-property record cited the Scope Rule and other rules of the underlying 1975 Agreement, both the Carrier and the Organization recognize the Implementation Agreement and the Letter of Questions and Answers are controlling.

The Gurdon Branch of track ran from Mile Posts 428 to 497 and was wholly within the new Arkansas seniority division. It was UP territory prior to the UP-SP merger. Its approximate mid-point was the city of Camden, Arkansas at Mile Post 457. Prior to June 12, 1998, three gangs apparently worked in the area of the Gurdon Branch: Gangs 1014, 1017 and 7922. Gang 1017 contained the Claimants and was headquartered at El Dorado, Arkansas, the extreme southern end of the Gurdon Branch. The gang was abolished on June 12, 1998. The maintenance of the Gurdon Branch was, therefore, shifted to Gangs 1014 and 7922. Gang 7922 was headquartered at Camden, which was on the former SSW territory. For purposes of this Claim, therefore, the bulk of the members of Gang 7922 were former SSW employees who were on the gang via the exercise of their "prior rights" provided by the Implementation Agreement.

The Claim arose when Gang 7922 performed routine maintenance work on the Gurdon Branch on the Claim dates. The thrust of the Claim by the Organization is that the "prior rights" mechanism reserved *work* to former UP employees and, in effect, excluded the former SSW employees on Gang 7922. Carrier, on the other hand, contends that the prior rights mechanism applies only to *positions*. In Carrier's view, work on the Arkansas seniority division may properly be performed by any qualified employees holding seniority on the consolidated seniority

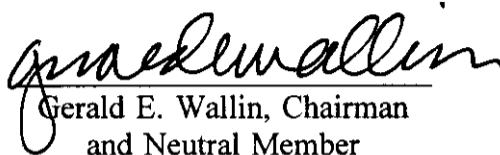
roster.

There is no dispute over several aspects of this Claim. The Claimants and the Gang 7922 employees all held Arkansas division seniority. The work was routine maintenance. There was no emergency circumstances. The days and hours of the work in dispute were as stated in the Claim. Finally, the Claimants were, for purposes of this Claim, all fully employed elsewhere; when Gang 1017 was abolished, all of the Claimants were able to exercise their seniority to avoid furlough.

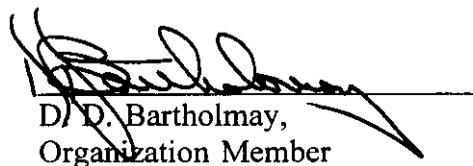
We have carefully examined the Implementation Agreement in its entirety. That review compels us to reject the Organization's view of its operation. Our analysis has considered not only the provisions of the Implementation Agreement quoted earlier but also the context of the entire document where the numerous references to "position" or "positions" occur. That analysis readily convinces us that the terms "position" or "positions" were intended to mean only the available personnel openings on working gangs that could be filled by employees in accordance with their seniority and/or prior rights. It follows, therefore, that the prior rights mechanism did not create any jurisdictional barriers, corresponding with former territory boundaries, to the performance of work anywhere on the Arkansas seniority division by employees properly holding Arkansas division seniority, regardless of the source of that seniority.

AWARD:

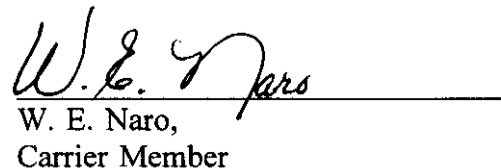
Claim denied.



Gerald E. Wallin, Chairman
and Neutral Member



D. D. Bartholmay,
Organization Member



W. E. Naro,
Carrier Member