

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 39864
Docket No. MW-38898
09-3-NRAB-00003-050336
(05-3-336)**

The Third Division consisted of the regular members and in addition Referee Brian Clauss when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division –
(IBT Rail Conference**

PARTIES TO DISPUTE: (

**(BNSF Railway Company (former Burlington
(Northern Railroad Company)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when, after abolishing the Foreman Position 42058 on Brush Cutting Gang TMGX0336 on February 11, 2002, the Carrier assigned said foreman duties to Group 3 Operator M. Haberer beginning on February 11, 2002 and continuing until said gang was abolished on March 15, 2002. [System File C-02-P016-5/10-02-0307 (MW) BNR]**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants M. Haberer shall now “be paid the difference in pay between that of a Group 3 Operator and a Foreman for all straight time and overtime worked between February 11, 2002 and March 15, 2002. . . .”**

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

The Organization claims that the Carrier violated the Agreement when the Claimant had to perform Foreman duties in addition to his duties as a Group 3 Operator on the cutting machine. Specifically, the Organization claimed that the Claimant had to perform his regular duties as a Group 3 Operator and also had to get Track Warrants, Track and Time Permits, enter the daily time for the payroll, file machine reports and file hourly reports with the Division office. The Carrier counters that these additional duties are not Foreman duties. There are numerous assignments on the railroad that require employees to get track and time and function as an employee in charge. They are not Foreman assignments. Further, the claim does not contain any explanation of the amount of time devoted to the claimed tasks and is, therefore, insufficient.

The Board carefully reviewed the evidence in this matter. A Foreman and a Machine Operator had been assigned to the cutting machine on the Brush Cutting Gang. Third Division Award 35744 required that two Machine Operators be assigned to the cutting machine. The Foreman position was abolished and the Carrier bulletined another Group 3 Operator to the gang. The position was awarded to the Claimant with a start date of February 11, 2002. He worked on the gang until the gang was abolished on March 15, 2002.

The Organization filed a claim for Foreman pay for the period the Claimant worked on the gang. The Organization claimed, in pertinent part, "the duties the Claimant had to perform in addition to his duties as the Group 3 Operator on the Brushcutter was that of having to get Track Warrants, Track and Time Permits, entering the daily time for payroll, filing machine reports and hourly reports with the Division Office."

Foremen are not the only employees who get track and time and enter payroll – many different Rules qualified employees perform the same tasks as part of their work. The Carrier complied with Third Division Award 35744 and assigned two Group 3 Machine Operators to the brushcutter. Pursuant to that Award, the brushcutter was Group 3 Machine Operator work and not Foreman work. Further, there is no requirement that all employees be under direct supervision at all times. To the contrary, during the handling of the claim, the Carrier provided numerous bulletined assignments that did not have a Foreman.

The burden is on the Organization to establish a violation of the Agreement. The evidence offered by the Organization is insufficient to establish a violation of the Agreement. Accordingly, the claim is denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 31st day of July 2009.