

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award **Number** 20130
Docket Number MU-19647

John H. Dorsey, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employee
(Southern Pacific Transportation Company
(Texas and Louisiana Lines

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood that:

(1) The Carrier violated the Agreement when it called and used Extra Gang Foreman M. B. Horn instead of senior Extra Gang Foreman **J. R. Peyton** to inspect track between **Hearne** and Dime Box, Texas on June 13, 1970 (System File MW-70-65).

(2) Extra Gang Foreman **J. R. Peyton** be allowed **seven** (7) hours of pay at his time and one-half rate because of the violation referred to in Part (1) hereof.

OPINION OF BOARD: Section **1(1)** of Article II, of the Agreement reads, insofar **as** here material:

Work on Unassigned Days: Where work is required by the Carrier to be performed on a day which is not a part of any assignment, it **may** be performed by an available extra or unassigned employee who will otherwise not have forty (40) hours of work that week; in all other cases by the regular employee. (**Emphasis** supplied.)

From our study of the record made on the property we find that the pivotal issue to be adjudicated in determining the merits of the Claim is whether under the factual situation presented Claimant was the "regular employee" **within** the meaning of that phrase as historically interpreted and applied by this Board and as generally understood in the industry. From the facts of record we find that Claimant was not the "regular employee".

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

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934:

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That this Division of the Adjustment Board has jurisdiction **over**
the dispute involved herein; and

Carrier did not violate the Agreement.

A W A R D

Claim denied.

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

ATTEST: *AW. Paulos*
Executive Secretary

Dated at Chicago, Illinois, this **31st** day of January 1974.