NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 22942

THIRD DIVISION Docket Number MW-22215

Dana E. Eischen, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Burlington Northern Inc.

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

(1) The Agreement was violated when, on May 23, 1976, other than scope cowered employes were permitted to repair a frog on the CNW crossing at Sterling, Illinois /System File 11-3/MW-84(c) 9/10/76/.

(2) As a consequence of the above-mentioned violation, Welder K. L. Boling shall be allowed eight (8) hours' pay at his overtime rate."

OPINION OF BOARD:' The facts of the instant case are not in dispute. On Saturday, May 22, 1976, a Chicago and North Western (C&NW) track inspector found a broken frog in the Burlington Northern (BN)-C&NW crossing at Sterling, Illinois. The inspector immediately ordered a five-mile-an-hour speed restriction over the crossing and reported the damaged frog to the BN agent at Sterling. The agent, in turn, notified the BN train dispatcher of the frog's condition and need of repair. BN then scheduled Claimant, Welder K. L. Boling to repair the frog on Monday morning, May 24, 1976. On Sunday, May 23, 1976, the C&NW track inspector arranged for the repair of the frog in question by a local welder. Claimant was notified upon reporting for work on Monday, May 24, 1976, to proceed to the location of the frog and make immediate repairs. Claimant found the frog already repaired and the instant claim was presented to the Carrier.

In denying the claim, Carrier asserts that the work was assigned without its direction or approval. We find no evidence on the record to support the Organization's accusation that C&NW was forced to hire out the repair because of BN "negligence" in scheduling the work for the following Monday rather than during the weekend. Absent contractual limitation, Carrier has the right to direct its work force and to schedule work. Further, as we noted in our Award 3-20721, Carrier cannot be held responsible for work performed "without instructions or communication with anyone in authority from the Carrier." It is apparent from the record that the C&NW inspector acted on his own motion. Thus, there was no actual or apparent BN authority extended and no principal-agent relationship established. Accordingly, Carrier may not be held culpable for the actions of the C&NW inspector.

These is no doubt that the work performed on the broken frog was properly Claimant's. Unfortunately, however, there are occasionally wrongs for which the law (or contract) provides no remedy. The circumstances of the instant case frame just such a wrong. We have no alternative but to deny the claim.

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

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

The Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 15th day of August 1980.