

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26298
Docket Number TD-24658

Josef P. **Sirefman**, Referee

PARTIES TO DISPUTE: (America" Train Dispatchers Association
(Duluth, **Missabe** and Iron Range Railway Company

STATEMENT OF CLAIM:

- "(a) The Duluth **Missabe** and Iron Range Railway Company (hereinafter referred to as 'the Carrier') violated and continues to violate the effective Agreement between the parties (effective December 1, **1972**), including Rule 1 (a), when the hot box detector office readout machine and related equipment that was removed from the Train Dispatchers' office at Iron **Jct** was installed in the Two Harbors Yard Office being placed in service **effective 12:01** P.M. Wednesday, March 18, 1981 to be monitored by persons other than train dispatchers.
- (b) Because of said continuing violation the Carrier shall now compensate:
- (1) The senior extra train dispatcher available a 3 hour call for the **12:01** P.M. to 3:00 P.M. on March 18, 1981 at the rate of trick train dispatcher and one days' pay (eight hours) at the **rate** of trick train dispatcher for each trick train dispatcher shift (i.e. first, second and third trick or shift) handling the Iron Range Division beginning after **12:01** P.M. March 18, 1981 to a" extra train dispatcher in successive seniority order until ehe violation **ceases**.
 - (2) In the event no extra train dispatcher is available (if available thereby entitled to compensation at the straight time rate except on the **sixth** and/or seventh day entitled to compensation at the time and one-half rate) the amount of compensation set forth in (b)(1) is claimed in behalf of a regularly assigned train dispatcher observing rest days in successive seniority order and if no regularly assigned train dispatcher observing rest days is available then on behalf of a regularly assigned train dispatcher on an overtime basis in **secessive** (sic) seniority order at the **appropriate** rest day or overtime rate.
 - (3) Eligible individual claimants entitled to compensation claimed herein are readily identifiable on a continuing basis and shall be determined by a joint check of the Carrier's records. The claimants for the period March 18, 1981 to May 6, 1981 and the rate claimed are:

3/18/81	J. H. Oberbillig	3 hours time and one-half
3/18/81	S. J. Novak	8 hours straight time
3/18/81	A. C. Hanson	8 hours time and "e-half
3/19/81	J. H. Oberbillig	8 hours straight time
3/19/81	S. J. Novak	8 hours straight time
3/19/81	M. H. Burm	8 hours time and one-half
3/20/81	S. J. Novak	8 hours straight time
3/20/81	G. L. VanDervort	8 hours time and one-half
3/20/81	M. H. Burm	8 hours time and one-half
3/20/81	S. J. Novak	8 hours straight time
3/21/81	G. L. VanDervort	8 hours time and one-half
3/21/81	A. W. Suihkonen	8 hours time and one-half
3/22/81	S. J. Novak	8 hours straight time
3/22/81	D. O. Menzel	8 hours time and one-half
3/22/81	J. C. Beebe	8 hours time and "e-half
3/23/81	S. J. Novak	8 hours straight time
3/23/81	D. O. Menzel	8 hours time and one-half
3/23/81	L. J. Sojka	8 hours time and one-half
3/24/81	S. J. Novak	8 hours straight time
3/24/81	A. C. Hanson	8 hours time and one-half
3/24/81	L. J. Sojka	8 hours time and one-half
3/25/81	J. H. Oberbillig	8 hours time and one-half
3/25/81	S. J. Novak	8 hours straight time
3/25/81	A. C. Hanson	8 hours time and one-half
3/26/81	J. H. Oberbillig	8 hours time and one-half
3/26/81	M. H. Burm	8 hours time and one-half
3/26/81	N. B. Schnortz	8 hours time and one-half
3/27/81	S. J. Novak	8 hours straight time
3/27/81	M. H. Burm	8 hours time and one-half
3/27/81	G. L. VanDervort	8 hours time and "e-half
3/28/81	G. L. VanDervort	8 hours time and one-half
3/28/81	A. W. Suihkonen	8 hours time and one-half
3/28/81	N. B. Schnortz	8 hours time and one-half
3/29/81	S. J. Novak	8 hours straight time
3/29/81	D. O. Menzel	8 hours time and one-half
3/29/81	J. C. Beebe	8 hours time and one-half
3/30/81	D. O. Menzel	8 hours time and one-half
3/30/81	L. J. Sojka	8 hours time and one-half
3/30/81	J. C. Beebe	8 hours time and one-half
3/31/81	J. H. Oberbillig	8 hours time and one-half
3/31/81	S. J. Novak	8 hours straight time
3/31/81	L. J. Sojka	8 hours time and one-half
4/ 1/81	J. H. Oberbillig	8 hours time and one-half
4/ 1/81	S. J. Novak	8 hours straight time
4/ 1/81	N. B. Schnortz	8 hours time and one-half
4/ 2/81	J. H. Oberbillig	8 hours straight time
b / 2/81	S. J. Novak	8 hours Straight time
4/ 2/81	M. H. Burm	8 hours time and one-half
4/ 3/81	M. H. Burm	8 hours time and one-half
4/ 3/81	G. L. VanDervort	8 hours time and one-half
4/ 3/81	A. W. Suihkonen	8 hours time and one-half

4/ 4/81	S. J. Novak	8 hours straight time
4/ 4/81	G. L. VanDervort	8 hours time and one-half
4/ 4/81	A. W. Suihkonen	8 hours time and one-half
4/ 5/81	S. J. Novak	8 hours straight time
4/ 5/81	D. O. Menzel	8 hours time and one-half
4/ 5/81	J. C. Beebe	8 hours time and one-half
4/ 6/81	S. J. Novak	8 hours straight time
4/ 6/81	D. O. Menzel	8 hours time and one-half
4/ 6/81	L. J. Sojka	8 hours time and one-half
4/ 7/81	S. J. Novak	8 hours straight time
4/ 7/81	A. C. Hanson	8 hours time and one-half
4/ 7/81	L. J. Sojka	8 hours time and "e-half
4/ 8/81	S. J. Novak	8 hours straight time
4/ 8/81	J. H. Oberbillig	8 hours time and one-half
4/ 8/81	A. C. Hanson	8 hours time and one-half
4/ 9/81	J. H. Oberbillig	8 hours time and one-half
4/ 9/81	M. H. Burm	8 hours time and one-half
4/ 9/81	T. R. Kennedy	8 hours time and one-half
4/10/81	S. J. Novak	8 hours straight time
4/10/81	M. H. Burm	8 hours time and "e-half
4/10/81	G. L. VanDervort	8 hours time and one-half
4/11/81	S. J. Novak	8 hours straight time
4/11/81	G. L. VanDervort	8 hours time and one-half
b/11/81	A. W. Suihkonen	8 hours time and one-half
4/12/81	S. J. Novak	8 hours straight time
b/12/81	D. O. Menzel	8 hours time and one-half
4/12/81	J. C. Beebe	8 hours time and one-half
4/13/81	S. J. Novak	8 hours straight time
4/13/81	D. O. Menzel	8 hours time and one-half
4/13/81	L. J. Sojka	8 hours time and one-half
4/14/81	A. C. Hanson	8 hours time and one-half
b/14/81	L. J. Sojka	8 hours time and one-half
4/14/81	M. H. Burm	8 hours time and one-half
4/15/81	S. J. Novak	8 hours straight time
b/15/81	A. C. Hanson	8 hours time and one-half
4/15/81	N. R. Schnortz	8 hours time and one-half
4/16/81	M. H. Burm	8 hours time and one-half
4/16/81	N. B. Schnortz	8 hours time and one-half
4/16/81	T. R. Kennedy	8 hours time and one-half
4/17/81	S. J. Novak	8 hours straight time
4/17/81	M. H. Burm	8 hours time and one-half
4/17/81	G. L. VanDervort	8 hours time and one-half
4/18/81	S. J. <i>Novak</i>	8 hours straight time
4/28/81	S. J. Novak	8 hours straight time
4/28/81	A. C. Hanson	8 hours time and one-half
4/28/81	L. J. Sojka	8 hours time and one-half
4/18/81	G. L. VanDervort	8 hours time and one-half
b/18/81	A. W. Suihkonen	8 hours time and one-half
4/19/81	S. J. Novak	8 hours straight time
4/19/81	D. O. Menzel	8 hours time and one-half
b/19/81	J. C. Beebe	8 hours time and one-half

4/20/81	S. J. Novak	8 hours straight time
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4/23/81	J. H. Oberbillig	a hours time and one-half
b/23/81	N. B. Schnortz	a hours time and one-half
4/24/81	S. J. Novak	a hours straight time
4/24/81	J. H. Oberbillig	8 hours time and one-half
4/24/81	G. L. Vandervort	a hours time and one-half
4/25/81	J. H. Oberbillig	a hours straight time
4/25/81	S. J. Novak	8 hours straight time
4/25/81	G. L. Vandervort	8 hours time and one-half
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5/ 3/81	S. J. Novak	a hours straight time
5/ 3/81	J. H. Oberbillig	8 hours time and one-half
5/ 3/81	D. O. Menzel	8 hours time and one-half
5/ 4/81	S. J. Novak	8 hours straight time
5/ 4/81	T. R. Rohan	8 hours straight time
5/ 4/81	J. H. Oberbfillig	8 hours time and one-half
5/ 5/81	S. J. Novak	8 hours straight time
5/ 5/81	T. R. Rohan	8 hours straight time
5/ 5/81	L. J. Sojka	8 hours time and one-half"

OPINION OF BOARD: The Brotherhood of Railway, Airline and Steamship Clerks was a Third Party **to** this case and did partipate.

This dispute concerns the shifting of the monitoring of hot box detectors from Train Dispatchers who had been doing it for twelve years to another location where Clerks are assigned to that task. The **Organization** claims the work under the Scope Rule in the Agreement. The crucial issue here is that when there is a claim of exclusivity the burden rests on the Organization **to** establish by history, practice, tradition and custom that the work has been performed by its members to the exclusion of others (see the following Third Division Awards which set forth this doctrine: 12075, 16112, 17752, 20039, 21036-39, 21898, 22183, 22761, 24289).

Here that burden has not been sustained for the record before this Board **is** clear that prior to 1969 the monitoring function was performed by Yardmasters and Telegraphers; therefore, historically and customarily it has not been exclusively performed by Claimants herein. The Awards principally relied upon by the **Organization**, to support the claim that the twelve year period is sufficient to offset the times when other **employees** performed hot box detector monitoring, are not persuasive. The facts in Third Division Awards 6756 and 18548 are not apposite; and in Third Division Award 21022 the conclusion was that there **was** no contract violation because the disputed work was not exclusively reserved to those Claimants. The myriad Awards cited by the Organization have been carefully reviewed, but they do not gainsay that the facts in this instant Claim do not satisfy the standard set forth in Third Division Awards 12075 through 24289 cited above.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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;

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

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 24th day of April 1987.