

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 27771  
Docket No. MW-27082  
89-3-86-3-135

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes  
(Davenport, Rock Island and North Western Railway  
(Company

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

(1) The Agreement was violated when, from November 20, 1984 to January 6, 1985, and on a continuing basis, the Carrier used Roadmaster D. Holloway and Assistant Roadmaster M. Gladfelter to perform routine track inspection work between Mile Post 158.9 and the 'East Wye Switch' at Davenport (System File 31-3).

(2) Because of the aforesaid violation, Track Inspector M. Hughes shall be allowed two hundred twenty-eight (228) hours of pay at the track inspector's straight time rate and one hundred thirty-six (136) hours of pay at the track inspector's overtime rate for November 20, 1984 through January 6, 1985 and pay at the appropriate track inspector's rate (straight time or overtime) for each hour routine track inspection work performed by Messrs. D. Holloway and M. Gladfelter subsequent to January 6, 1985 continuing until the position of track inspector covering the territory referred to in Part (1) hereof is bulletined and assigned."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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 waived right of appearance at hearing thereon.

The pertinent Agreement provisions disputed herein refer to the position of track inspector and track inspection. The Carrier eliminated the position and the Organization claims that a Supervisor is now regularly doing the employee's work of inspecting track.

The Carrier denied on the property any Agreement violation. It argues before this Board that the Claim was pursued to the Board without any requested conference held on the property.


We have reviewed the Carrier's contention and must agree. Although the Organization includes in its Rebuttal a letter attesting to the conference(s) on the property concerning this Claim, that letter stands as new evidence. Moreover, that letter is dated October 31, 1986, more than seven (7) months following the Organization's March 4, 1986 Notice of Intent. Our review of the on-property record shows no evidence of a conference. This Board is restricted to hear only cases presented in the "usual manner" and to make its Awards based only upon evidence and argument presented on the property (Section 3, First (i) of the Railway Labor Act, as amended, and Circular No. 1 of the National Railroad Adjustment Board). We must, therefore, dismiss this Claim. This Board lacks jurisdiction as there is no probative evidence in the on-property record of a conference being requested or held.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 2nd day of March 1989.