

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employees
(Burlington Northern Railroad Company
(former St. Louis-San Francisco Railway Company)

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

(1) The Carrier violated the Agreement when it assigned Machine Operator K. L. Stafford to perform trackman's work at Columbus, Kansas on May 23, 31, June 14, 17, 18, 19, 20 and 21, 1985 (System File B-2292/EMWC 85-9-18A).

(2) As a consequence of the aforesaid violation, Trackman C. R. Schenherr, Jr. shall be allowed sixty-four (64) hours of pay at the trackman's straight time rate."

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.

In Third Division Award 27696 we considered a dispute between these same parties involving identical issues to those involved in this Claim and sustained the Claim of the Organization on the basis that it was an Agreement violation to have Machine Equipment Operators perform Trackman's work when their machines were inoperable. We have not been persuaded that Award 27696 is in error and it will be followed here.

It is noted that the Claimant in Award 27696 was furloughed at the time that Machine Operators were performing Trackman's work. That is not the case here. After Claimant's furlough from District Gang 5-11 at Columbus, Kansas, he was able to exercise his seniority to a Trackman's position on District Gang 5-12 at Miami, Oklahoma. On each date noted in the Statement of Claim, Trackman Schenherr was fully employed. Full employment is not a bar to reparations but payment of a full days' pay to a fully employed Claimant for each day of violation may be excessive. Accordingly, we will award 3 hours' pay for each day noted in the Statement of Claim.

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Award No. 27875
Docket No. MW-27356
89-3-86-3-579

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 4th day of May 1989.