

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 D. W. Marshall to perform trackman's work at the Rail Complex (System File B-1422-1/EMWC 85-9-24).

(2) As a consequence of the aforesaid violation, Trackman D. D. Benefiel shall be allowed an additional eight (8) hours of pay for each day Machine Operator D. W. Marshall performs trackman's work at the Rail Complex beginning sixty (60) days retroactive from July 31, 1985 and continuing until the violation is discontinued."

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.

This Claim is the fourth of a series of Claims turning on the same Agreement and issues. 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 they were not using their machines. In Third Division Awards 27874 and 27875 we stated that we were not being persuaded that Award 27696 was in error and also sustained those Claims. We reach the same result here.

However, in each of the Claims involved in Awards 27696, 27874, and 27875 not only were specific dates identified on which Machine Operators performed Trackman's work but the type of work was noted as well. This is not the case here. We are troubled by this Claim's sweeping scope.

The Claim seeks sixty days' retroactive compensation from the date of filing without specifically identifying a single date on which the Machine Operator performed a specific item of Trackman's work. It also asks for compensation to be continued until the violation is discontinued. We recognize that retroactive Claims, as well as continuing Claims, are provided for in the Agreement but we question their appropriateness in the circumstances we are faced with here.

Accordingly, we embrace the concept that it is an Agreement violation to use Machine Operators in the performance of Trackman's work while their machines are inoperable but we will not award compensation to a fully employed Trackman without a specific showing that Trackman's work was performed on a specific date.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Deyer - Executive Secretary

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