

CORRECTED

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Form 1

Award No. 29642  
Docket No. MW-28012  
93-3-87-3-562

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

(Brotherhood of Maintenance of Way Employes

PARTIES TO DISPUTE: (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 used outside forces to perform track work in the vicinity of Mile Post 241 on June 13 and 14, 1986, instead of calling and using its available off-duty Track Department employees (System File B- 2023/EMWC 86-8-28).
- (2) Messrs. D. R. Phillips, D. H. Kelsey, P. D. Fravel, J. B. Bounous and R. G. Carlisle shall each be allowed thirty (30) hours of pay at their respective overtime rates."

**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 employe 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.

At 3:30 p.m. on June 13, 1986, Train 181-12 derailed 12 cars at MP 198.5. At 5:30 p.m., the Carrier called Hulcher Emergency Service, Inc. to work the derailment. Hulcher forces arrived at the site at 9:55 p.m. that date and worked until 4:45 a.m. on June 14, 1986 rerailling cars. Hulcher further bulldozed 17 rail lengths (663 feet) of damaged track aside until approximately 8:30 a.m.

At 7:00 p.m. on June 13, 1986, Special Equipment Operator K. Sullivan was instructed to report for duty at the derailment site at 5:30 a.m. on June 14, 1986. Sullivan did so and used a motor grader to prepare the roadbed for reconstruction. On June 14, 1986, Claimants worked at the derailment site installing rail panels from 7:30 a.m. until 6:05 p.m. and received 2.5 hours of overtime in addition to their straight time compensation.

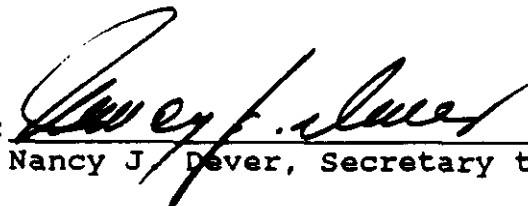
The Organization asserts that it is not seeking compensation for the rerailing work. The instant claim is for "work of clearing away damaged track" (Org. Submission at 2). The record establishes that such work has been performed by the covered employees. While an emergency may have existed, there is no explanation in the on-property handling concerning why Claimants could not be called to perform that work which they have performed in such situations. The claim will, therefore, be sustained but relief shall be limited to compensation for time that it took the outside contractor to clear away damaged track that could have been performed by Claimants.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever, Secretary to the Board

Dated at Chicago, Illinois, this 7th day of June 1993.