

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 29955  
Docket No. MW-29939  
93-3-91-3-319

The Third Division consisted of the regular members and in addition Referee Hugh G. Duffy when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(  
(CSX Transportation, Inc. (former Louisville  
(and Nashville Railroad Company)

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

- (1) The Agreement was violated when the Carrier assigned Roadmaster White instead of Foreman J. M. Watkins to perform foreman's work supervising track maintenance work (surfacing gang) on March 3 and 4, 1990 [System File 9(24)(90)/12(90-611) LNR].
- (2) As a consequence of the aforesaid violation, Mr. J. M. Watkins shall be allowed twenty-two (22) hours of pay at the surfacing gang foreman's time and one-half 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 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.

On March 3 and 4, 1990, the Roadmaster directed the Foreman of the weekend force to put out flagging orders for a tamper and ballast regulator involved in resurfacing work. The Roadmaster also arranged for the necessary track time for these machines to operate on the trackage involved, and for the subsequent release of trains to operate over the trackage when the work was complete.

The Organization contends that this work is reserved to Foremen and Assistant Foremen under the Agreement, and that the Claimant should have been called to perform the work. The Carrier contends that it need not call a Foreman in on overtime when a regularly-scheduled Foreman is already on the premises.

The issue involved in this case has been presented to the Board on numerous occasions. As stated in Third Division Award 26438:

"This Board has consistently held that, unless otherwise specifically provided in the Agreement, Carrier has the sole and exclusive right to determine when and under what circumstances a foreman is assigned to supervise a group of employees. The burden of proof is on the Claimant to show that some Rule of the Agreement has been violated. The Claimant in the instant case has failed to sustain that burden. Accordingly, we must deny the claim."

After reviewing the record in this matter, we conclude that the Organization failed to carry its requisite burden of proof and that the Claim must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

Catherine Loughrin  
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 17th day of December 1993.