

**CORRECTED**

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 30212  
Docket No. MW-28552  
94-3-88-3-376

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

**PARTIES TO DISPUTE:** (Brotherhood of Maintenance of Way Employees  
(Union Pacific Railroad Company  
((former Missouri Pacific Railroad Company)

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

- (1) The Carrier violated the Agreement when it assigned Trackman G. Davidson instead of Work Equipment Mechanic A. Eastup to perform work equipment repair work on December 9, 1986 (Carrier's File 870431).
- (2) As a consequence of the aforesaid violation, Mr. A. Eastup shall be allowed:
  - (a) The difference between what he was paid at the Machine Operator's rate and what he should have been paid at the Work Equipment Mechanic's rate for eight (8) hours.
  - (b) Eight (8) hours of pay at the Work Equipment Mechanic's time and one-half overtime rate.
  - (c) Three (3) hours of pay at the Work Equipment Mechanic's double 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 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 December 9, 1986, Carrier forces replaced a broken axle on a spike driver machine. One of the employees who worked on the repair job was a Trackman. The Organization contends that the Trackman performed work within the Work Equipment classification on that date, and that since Claimant has greater seniority as a work equipment mechanic he was entitled to be assigned to the job.

During the handling of this dispute on the property, Claimant submitted a statement indicating that he was present when the work was performed on December 9, 1986, and that the reason there was a need to assign someone to perform the repair was because the regular repair mechanic was on vacation at the time.

Carrier contends the work was accomplished by Work Equipment Mechanics, with some assistance by Machine Operator Davidson, who was temporarily assigned to operate the spike driver. Carrier's post conference denial specifically indicated that payroll records showed the regular repair mechanic was not on vacation as alleged by the Claimant.

Review of this record in its entirety leads this Board to conclude that the Organization has not met its burden of proving the elements of its claim. There is no citation necessary for the fundamental principle that the Board will not weigh evidence, attempt to resolve conflicts therein, or make findings when there are disputes of fact. In the instant case, the factual predicate for the claim, that a Trackman was assigned to perform work equipment work because the regular repair mechanic was on vacation, was directly refuted by the Carrier during the handling of this dispute on the property. Because we are unable to determine whether a Trackman was assigned as an equipment mechanic, as alleged by the Organization, or was simply assisting the regular mechanics as an incidental part of this regular assignment as asserted by the Carrier, we must conclude that there is an irreconcilable conflict of fact that dictates denial of this Claim.

AWARD

Claim denied.

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NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:



Linda Woods - Arbitration Assistant

Dated at Chicago, Illinois, this 8th day of June 1994.