

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 30775  
Docket No. MW-30021  
95-3-91-3-415

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(  
(Consolidated Rail Corporation

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

(1) The Agreement was violated when the Carrier assigned B&B Supervisor J. Gilbert, instead of B&B Foreman E. Gallis, to perform B&B foreman's duties at Bridges 40.76, 40.1 and 39.80 on the West Virginia Secondary on November 4, 1989 (System Docket MW-1099).

(2) The Agreement was violated when the Carrier assigned B&B Supervisor J. Gilbert, instead of B&B Foreman E. Gallis, to perform B&B foreman's duties at Bridge 191.77 on the West Virginia Secondary on November 10, 1989 (System Docket MW-1097).

(3) The Agreement was violated when the Carrier assigned B&B Supervisor J. Gilbert, instead of B&B Foreman E. Gallis, to perform B&B foreman's duties at Bridge 191.77 on the West Virginia Secondary on November 11, 1989 (System Docket MW-1100).

(4) The Agreement was violated when the Carrier assigned B&B Supervisor J. Gilbert, instead of B&B Foreman E. Gallis, to perform B&B foreman's duties at Bridges 38.01 and 38.88 on the West Virginia Secondary on November 17, 1989 (System Docket MW-1096).

(5) The Agreement was violated when the Carrier assigned B&B Supervisor J. Gilbert, instead of B&B Foreman E. Gallis, to perform B&B foreman's duties at Bridge 30.96 on the West Virginia Secondary on November 18, 1989 (System Docket MW-1098).

(6) As a consequence of the aforementioned violation in Part (1) above, Claimant E. Gallis shall be paid for fourteen (14) hours at his B&B foreman's time and one-half rate of pay.

(7) As a consequence of the aforementioned violation in Part (2) above, Claimant E. Gallis shall be paid for thirteen (13) hours at his B&B foreman's time and one-half rate of pay.

(8) As a consequence of the aforementioned violation in Part (3) above, Claimant E. Gallis shall be paid for thirteen (13) hours at his B&B foreman's time and one-half rate of pay.

(9) As a consequence of the aforementioned violation in Part (4) above, Claimant E. Gallis shall be paid for twelve (12) hours at his B&B foreman's time and one-half rate of pay.

(10) As a consequence of the aforementioned violation in Part (5) above, Claimant E. Gallis shall be paid for fifteen (15) hours at his B&B foreman's time and one-half rate of pay."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

Claimant is a B&B Foreman. The Organization asserts that on the dates set forth in the separately filed claims the Carrier permitted Supervisor J. S. Gilbert to perform the work of a B&B Foreman.

On the relevant dates, the Carrier required the loading and hauling of rip rap (stone fill) to bridges along the Carrier's West Virginia Secondary. On those dates Mechanics R. F. Depue and R. D. Peck performed the work. The Organization asserts that Mechanics Depue and Peck worked under Gilbert rather than under a B&B Foreman.

In a statement submitted by Supervisor Gilbert, Gilbert denies that he performed the work of a B&B Foreman and states that he was only on the jobs in his capacity as a Supervisor. According to Gilbert, Claimant had previously told Gilbert that he was not willing to work with a B&B Mechanic loading and dumping rip rap and fill at the bridges and that he was only willing to direct the man. Therefore, according to Gilbert, Claimant was not scheduled to work the overtime. Further, according to Gilbert, in the absence of a Foreman the oldest qualified B&B Mechanic assumes the position of Foreman and, because Depue was senior, Depue assumed the position of Acting Foreman on these jobs.

Claimant denies that Gilbert asked him to work overtime at the job sites.

The Organization has failed to establish precisely what work Gilbert improperly performed. Gilbert's assertions that he was merely on the job sites supervising consistent with his job functions are not specifically refuted. The claims must fail for lack of proof.

#### AWARD

Claims denied.

#### O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Dated at Chicago, Illinois, this 6th day of April 1995.