

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 31136  
Docket No. MW-31950  
95-3-94-3-250

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 Employes  
(  
(Burlington Northern Railroad (former  
( St. Louis - San Francisco Railway Company)

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

- (1) The Agreement was violated when the Carrier assigned or otherwise permitted employees assigned to Track Gang 445 to perform track patrol work between Nichols Mile Post 242 and Monett Mile Post 283 on November 30, 1991, instead of assigning District Gang 442 (Track Foreman R. D. Long and Trackman Driver G. D. Jackson) (System File B-1495-2/8MWC 92-03-20B SLF)
- (2) As a consequence of the violation referred to in Part (1) above, Track Foreman R. D. Long and Trackman Driver G. D. Jackson shall each be allowed five (5) hour' pay at their respective time and one-half 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 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.

Track Gang 445 and Track Gang 442 observe different rest days. Track Gang 442 usually patrols between Mile Post 242 and Mile Post 283. On November 30, 1991, a rest day of Track Gang 442, Carrier assigned Track Gang 445 to patrol between these two points. Track Gang 445 performed the work at straight time rates. Claims were filed on behalf of Track Gang 442, contending that they were deprived of overtime when Track Gang 445 worked in its territory on their rest day.

The Board does not find the claim of the Organization to have merit. Carrier's Track Gangs have staggered rest days. For over ten years it has used a Track Gang working at straight time to patrol in the territory of a Gang that was observing rest days. It is not a violation of the Agreement to have necessary work performed at straight time rates, as was done here, rather than call out a Track Gang to do the work at overtime rates. That is one of the purposes of assigning staggered work-weeks, a product of the 1949 National 40-hour Week Agreement.

The claim is without merit.

AWARD

Claim denied.

ORDER

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

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Dated at Chicago, Illinois, this 26th day of September 1995.