

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31291
Docket No. MW-31735
95-3-94-3-7

The Third Division consisted of the regular members and in addition Referee Robert L. Hicks when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(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 Agreement was violated when the Carrier assigned or otherwise permitted Brakeman B. Remington to perform track inspection work between Nichols and Edwards on September 21 through 26, 1992 instead of assigning Assistant Foreman C.E. Pitts (System File B-1282-2/MWC 92-11-09A SLF).
- (2) As a consequence of the violation referred to in Part (1) above, Assistant Foreman C.E. Pitts shall be compensated at his applicable rate of pay for all time expended by Brakeman Remington in the performance of the track inspection work during the period cited."

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.

As Third Party in Interest, the United Transportation Union was advised of the pendency of this dispute, but did not file a Submission with the Board.

The genesis of the claim arose when Carrier assigned a trainman to obtain track and time information to operate a hy-rail truck containing a satellite marking device from September 21 thru September 26.

The Organization at first alleged that the trainman inspected track and obtained track and time (a line up of trains and their approximate times so that the hy-rail operation would avoid the train traffic).

On appeal, they expanded the claim with a further allegation that the trainman operated the hy-rail, but in doing so Claimant withdrew his contention that the trainman did track inspection and admitted that others obtain track and time information.

Even if the claim had not been expanded it has to be denied as there is nothing in the record to show that the operation of the hy-rail is exclusive to those within the scope of the Agreement. The Organization has not established the necessary proof to persuade this Board to sustain the claim.

AWARD

Claim denied.

ORDER

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 19th day of January 1996.