

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 31560  
Docket No. MW-30677  
96-3-92-3-407**

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

**PARTIES TO DISPUTE:** ( **Brotherhood of Maintenance of Way Employes**  
( **Soo Line Railroad Company** .

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

(1) The Carrier violated the Agreement when it assigned a track service employe to perform flagging, track inspection and track work on May 15 and 16, 1991, instead of calling and assigning Section Foreman R. D. West thereto (System File C-18-91-CO80-03/8-00066).

(2) As a consequence of the above-mentioned violation, Claimant R. D. West shall be allowed eight and one-half (8-1/2) hours' pay at his time and one-half overtime 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.

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.

On July 5, 1991 the Organization filed this claim with the Carrier alleging a Trainman was used to perform flagging duties, track inspection and track work duties on May 15 and 16, 1991. The claim was handled in the usual manner on the property with the Carrier electing to proceed to this Board with the dispute.

A close review of the record reveals that on May 15, 1991 a Trainman removed a spike from a switch in order to let a train into a spur track. When the train departed the spur, the Trainman respiked the switch. The record is void of any evidence that the Trainman performed any track inspections or any track work. No evidence was presented that the Trainman used anything other than his hands to remove and replace the spike at the switch.

On May 16, 1991 the record does not reveal that any work was performed by a Trainman.

The Organization has the burden to prove the Agreement was violated. While it states that a local agreement requires the use of a Maintenance of Way employee to perform flagging at the location of the alleged violations, it has not produced any evidence to show that a violation occurred. It has failed to meet its burden.

**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 25th day of July 1996.