

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31671
Docket No. MW-31227
96-3-93-3-317**

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
(Union Pacific Railroad Company
((former Missouri Pacific Railroad)**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when, after advertising a Central Division machine operator's position (Speedswing SS43M) and assigning same to Mr. S.K. Smith within Bulletin Number CEN00419, the Carrier canceled the position and thereafter assigned a heavy equipment operator (John Sullivan) working under the International Union of Operating Engineers' (IUOE) Agreement to operate said speedswing beginning March 30, 1992 (Carrier's File 920372 MPR).
- (2) As a consequence of the violation referred to in Part (1) above, Messrs. R. Camacho, Jr., G. P. Turpin, J. L. Bjorgum and S. K. Smith shall be compensated, at their respective rates of pay for an equal proportionate share of the total number of man-hours' expended by Mr. Sullivan in the performance of such work beginning March 30, 1992 and the Carrier shall re-advertise the aforementioned machine operator's position and assign it to a Maintenance of Way Department employe (Central Division Machine Operator)."

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 International Union of Operating Engineers was advised of the pendency of this dispute, and filed a Submission with the Board.

As in Third Division Awards 29111 and 30085 the Organization protests the use of an employee represented by the IUOE to operate a Speedswing on the Carrier's lines.

Both Awards found no violation of the Agreement occurred. The conclusion that the claims were without merit is based on sound reasoning.

The issue has long been decided.

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 29th day of August 1996.