

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32002
Docket No. MW-31193
97-3-93-3-205**

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

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(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 assigning the Central Division machine operator position (Speedswing SS43M) advertised in Bulletin Number CEN00419 to Mr. S. K. Smith, the Carrier canceled the position and thereafter assigned a heavy equipment operator working under the International Union of Operating Engineers' Agreement to operate said speedswing (Carrier's File 920280 MPR).**
- (2) As a consequence of the violation referred to in Part (1) above, the Carrier shall re-advertise the aforementioned machine operator position and assign it to a Maintenance of Way Department employee (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 were given due notice of hearing thereon.

As Third Party in Interest, the International Union of Operating Engineers was advised of the pendency of this dispute and chose to file a Submission with the Board.

This claim contests the award of a speedswing operator position to an employee covered by the International Union of Operating Engineers' agreement. The identical issue has been before this Board on four prior occasions. See Third Division Awards 29111, 29112, 30085 and 31671. In each case, the Board has denied the claim and held that the award of the position to Operating Engineers did not violate the Maintenance of Way Agreement. We find that these prior Awards govern the instant dispute, and we see no reason to depart from their holdings.

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 6th day of May 1997.