

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32158
Docket No. MW-31401
97-3-93-3-314**

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Terminal Railroad Association of St. Louis**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned Track Foreman R. Gartner to perform truck operator's duties beginning March 5, 1992 and continuing instead of assigning Mr. D. Matthes to perform such work (System File 1992-4/013-293-16).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant D. Matthes shall be allowed eight (8) hours' pay per day, at the truck operator's straight time rate and an equal amount of pay at the time and one-half rate, for all overtime worked by Foreman Gartner in the performance of truck operator's work beginning March 5, 1992 and continuing."**

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.

This claim, alleging an improper bulletining and filling of a Track Foreman position, is intertwined with negotiations between the Carrier and the local Organization concerning the conditions covering the same assignment. The Board is, of course, not involved in any way with the protracted, and apparently incomplete, bargaining. Solely at issue here is whether, as argued by the Organization, the Carrier's action is a Rule violation.

At some time prior to the claim (and the negotiations) a Hi-Rail Truck was operated by a Truck Operator, who was accompanied by a non-represented Assistant Track Supervisor, for purposes of track inspection. This practice was memorialized in an October 11, 1985 letter from the Assistant Chief Engineer.

Thereafter, the Carrier determined that it no longer wished to continue the operation utilizing two employees. The Assistant Track Supervisor was removed from the assignment. As a result of this, the Board agrees with the Carrier's contention that this ended the obligation to use a Truck Driver to accompany the Supervisor (since the Supervisor had been removed).

The Carrier then bulletined a Track Foreman, System, a position represented by the Organization. The position called for operation of the Hi-Rail Truck but also required qualification under Department of Transportation and Federal Railroad Administration standards as to track inspection. The Claimant, a qualified Truck Driver, was not awarded the position.

The Organization argues that the Carrier has simply placed a Foreman in a position which had been designated for a Truck Driver. The Organization's claim might well have merit were this the totality of the change. What is obvious, however, is that the Carrier had established a new position, a right covered in Rule 13, which calls for the bulletining of such position.

There is no contention that the Claimant has the necessary qualifications, and there is no Rule requirement or established practice that a Truck Driver position be maintained in the absence of a non-represented Supervisory Track Inspector.

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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 13th day of August 1997.