

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32445
Docket No. MW-31360
98-3-93-3-380**

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Consolidated Rail Corporation)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned Track Supervisor W. J. Klien to perform trackman's work (spiking, pulling spikes, installing joint bars, etc.) at the derailment site in the vicinity of Mile Post 174.5 of the Buffalo Line, Hyner, Pennsylvania on March 7, 8 and 9, 1992 (System Docket MW-2511).**
- (2) The Agreement was violated when the Carrier assigned Track Supervisor R. Groves to perform trackman's work (spiking, pulling spikes, installing joint bars, etc.) at the derailment site in the vicinity of Mile Post 174.5 of the Buffalo Line, Hyner, Pennsylvania on March 7, 8 and 9, 1992 (System Docket MW-2507).**
- (3) The Agreement was violated when the Carrier assigned Track Supervisor Wilson to perform trackman's work (spiking, pulling spikes, installing joint bars, etc.) at the derailment site in the vicinity of Mile Post 174.5 of the Buffalo Line, Hyner, Pennsylvania on March 8 and 9, 1992 (System Docket MW-2518).**
- (4) As a consequence of the violation referred to in Part (1) above, Mr. G. Urish shall be allowed twenty-seven (27) hours' pay at the appropriate rate and he shall receive credit for benefit and vacation purposes.**

- (5) As a consequence of the violation referred to in Part (2) above, Mr. W. H. Hirsch shall be allowed twenty-seven (27) hours' pay at the appropriate rate and he shall receive credit for benefit and vacation purposes.
- (6) As a consequence of the violation referred to in Part (3) above, Mr. R. A. Hiliard shall be allowed eighteen (18) hours' pay at the appropriate rate and he shall receive credit for benefit and vacation purposes."

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 United Railway Supervisors Association was advised of the pendency of this dispute and chose to file a Submission with the Board.

At a derailment occurring on March 8-9, 1992, the Organization contends that three Supervisors, not covered by the Maintenance of Way Agreement, undertook work regularly assigned to Trackmen. The Carrier disputes the extent and nature of such work performed by the Supervisors.

The claim is on behalf of three Trackmen, whom the Organization contends should have been called to perform this work. In its Submission, the Carrier states that the Claimants were in furlough status and thus not available for such emergency duty. The Organization contends that this argument was not raised on the property and, as a result, may not be considered by the Board. However, the Vice Chairman, in his claim

handling appeal, stated in reference to one of the Claimants he "was on furlough status." The Board reasonably assumes that the other two Claimants were in similar status, as argued by the Carrier.

As stated in Public Law Board No. 3477, Award 6:

"... [T]here can be an employee who is furloughed or on leave of absence and, therefore, is not subject to call. It is the Board's view that such an employee is not available under the terms of Rule 5. The Board believes that subject to call must be interpreted to mean that an employee must be active with the Company."

Since the Claimants were not "available", other aspects of the claim do not require further examination.

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 21st day of January 1998.