

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32644
Docket No. MW-31889
98-3-94-3-182**

The Third Division consisted of the regular members and in addition Referee Martin H. Malin 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 the Carrier assigned Store Room Clerk T. Scott to perform Maintenance of Way work at the Panel Plant beginning July 27, 1992 and continuing instead of advertising an assistant foreman's position and assigning such work to a Maintenance of Way employe (Carrier's File 930018 MPR).**
- (2) As a consequence of the violation referred to in Part (1) above, Mr C. A. Barnes shall compensated (sic) for ' . . . all wage loss suffered at the appropriate Asst. Foreman rate, from Monday July 27, 1992, to continue, until such time said position is bulletined and assigned to the Assistant Foreman classification within the BMWWE.' (Underscoring in original)."**

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 Transportation Communications International Union was advised of the pendency of this dispute and chose to file a Submission with the Board.

The instant claim involves the Organization's claim that work assigned to Storeroom Clerk was work that should have been assigned to an Assistant Foreman. The work involves checking material in gondola cars, filling out material transfer slips, ordering track material and components, ordering supplies and keeping inventory at the Panel Plant. The Organization had the burden of proving that members of its craft had performed this work exclusively. The record, however, demonstrates that the work in question had been performed by the Storeroom Clerk, a TCU-represented employee, for at least six years. Accordingly, the claim must be denied.

We note that Carrier also argued that the claim was not timely. Because we deny the claim on its merits, we do not consider the timeliness issue.

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 20th day of July 1998.