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**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32870
Docket No. MW-31883
98-3-94-3-183

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Union Pacific Railroad Company (former Missouri
(Pacific Railroad)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it assigned Machine Operators B. S. Emmerling and R. D. Collins to work extra on the on-line Tamping Gang BC15M and then failed and refused to allow then expenses as mandated under Award 298 (Carrier’s File 930060 MPR.)
- (2) As a consequence of the violation referred to in Part (1) above, Messrs. B. S. Emmerling and R. D. Collins shall each be allowed expenses as mandated by Award 298 for the period of August 18 through 30, 1992.”

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.

Claimants, Machine Operators, were assigned to a Surfacing Gang with a fixed headquarters. Between August 18 and August 30, 1992, Claimants operated a Brush Cutter that normally was assigned to on-line Tamping Gang BC15M. The Organization contends that Claimants were assigned to perform extra work on the on-line Tamping Gang, and used to fill Machine Operator vacancies that were under bulletin at the time. As such, it argues, they are entitled to be paid the expense allowances provided by Arbitration Award 298. Carrier contends that Claimants were not assigned to perform work with the on-line Tamping Gang. All that occurred was that the machine was temporarily assigned to Claimants' fixed headquarters Surfacing Gang, and because they did not leave the Gang they are not entitled to the expense allowances of Award 298.

This case is fact driven. If Claimants were assigned to work with the Tamping Gang they are entitled to the expense allowances provided by Award 298. If Claimants were not assigned to work with the Tamping Gang and the machine was only temporarily loaned to the Surfacing Gang, then they are not entitled to expense allowances.

Two facts tilt the case in favor of the Organization. The first is that Claimants were assigned to work on the machine during the period the on-line Tamping Gang Operator positions were vacant and under bulletin. This is a persuasive indicator that Operators were needed for the machine to do the work of the Tamping Gang. The second is that when Claimants operated the machine they were detached, up to ten miles, from the location where the remainder of the Surfacing Gang was working. This is a persuasive indicator that they were not working with the Surfacing Gang.

From these two facts, it is reasonable to conclude that Claimants were temporarily assigned to the on-line Tamping Gang. Accordingly, they are entitled to the expense allowances provided by Award 298, for the time assigned to the Tamping Gang.

The claim will be sustained.

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AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 21st day of October 1998.