

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35000
Docket No. MW-31081
00-3-93-3-21**

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

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Burlington Northern Railroad Company (former Fort
(Worth and Denver Railway Company)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned junior employee C. E. Criddle to perform foreman track inspector duties (inspecting track) between Wichita Falls and Alvord, Texas beginning November 1, 1991 and continuing, instead of assigning senior Foreman R. Shannon thereto and advertising a foreman track inspector position in compliance with the Agreement (System File F-91-45/9MWD 92-03-12 FWD).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant R. Shannon shall be allowed, ‘... the difference between the assistant foreman’s rate of pay and the foreman’s rate of pay, 8 hours each day and compensate claimant at the foreman’s rate of pay for all overtime earned by Mr. Criddle while filling this position commencing November 1, 1991 and continuing until violation ceases.’ and the Carrier shall be required to advertise and assign the position of foreman track inspector in compliance with the provisions of Rule 12.”**

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 case involves a claim by the Organization that the Carrier violated the bulletin rule, Rule 12, when it failed to advertise a Track Inspector's position that was in existence for more than 30 calendar days, and assigned an employee junior to the Claimant to perform inspector work on a daily basis. According to the Organization, when the Carrier abolished the position of Track Supervisor between Wichita Falls and Ft. Worth, Texas, effective October 1, 1991, it assigned a Track Foreman to the position of Foreman Track Inspector for more than 30 days. This assignment amounted to the creation of a new position which, the Organization argues, should have been bulletined to all employees holding seniority in the Foreman class. Further, the Organization asserts, the Carrier did not honor seniority in filling the position. Rather, it utilized a junior Track Foreman to perform the work.

The Carrier, on the other hand, asserts that track inspection previously was performed by employees in the position of Track Supervisor, which was abolished on October 1, 1991. Track Supervisor was an exempt position not covered by the Agreement. According to the Carrier, it is not required to fill positions lying outside the Agreement and the work of inspecting trackage is not reserved to any classification. The appointment of qualified employees to inspect track lies within the sole discretion of management based upon its determination of who is best qualified to perform the work. Accordingly, the Carrier argues, Rule 12 does not apply, and there was no requirement to advertise a position or to assign Inspector work to the Senior Track Foreman.

Based upon its review of the record evidence, the Board denies the claim. Track inspection is exempt work that is not reserved under the Agreement to any particular classification. Accordingly, when the Carrier abolished the Track Supervisor position on October 1, 1991, it had no obligation under the Agreement to create a new position

**Form 1
Page 3**

**Award No. 35000
Docket No. MW-31081
00-3-93-3-21**

or to assign the work to a particular classification. Therefore, the Board finds that the Claimant's seniority as a Track Foreman was not violated.

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 September, 2000.