

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 35187  
Docket No. MW-32608  
00-3-95-3-552**

**The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.**

**(Brotherhood of Maintenance of Way Employees  
PARTIES TO DISPUTE: (  
(Grand Trunk Western Railroad Company (former Detroit  
( and Toledo Shore Line Railroad Company)**

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- (1) The Agreement was violated when the Carrier assigned American Crane Operator R. Paredes to perform trackman’s duties at various locations on the Shore Line Subdivision beginning January 3 through February 26, 1994, instead of recalling and assigning furloughed Trackman B. Elmer to perform such work (Carrier’s File 8365-1-471 DTS).**
- (2) The Agreement was violated when the Carrier assigned Land Yard Foreman E. Merrell to perform trackman’s duties at various locations on the Shore Line Subdivision beginning January 10 through March 4, 1994, instead of recalling and assigning furloughed Trackman T. J. Neagley to perform such work (Carrier’s File 8365-1-472).**
- (3) As a consequence of the violation referred to in Part (1) above, Claimant B. Elmer shall be allowed two hundred forty-three (243) hours’ pay at the trackman’s straight time rate, forty-six and one-half (46.5) hours’ pay at the trackman’s time and one-half rate and twenty-seven and one-half (27.5) hours’ pay at the trackman’s double time rate.**
- (4) As a consequence of the violation referred to in Part (2) above, Claimant T. J. Neagley shall be allowed three hundred twelve and**

one-half (312.5) hours' pay at the trackman's straight time rate, thirty-two and one-quarter (32.25) hours' pay at the trackman's time and one-half rate and twenty-one and one-half (21.5) hours' pay at the trackman's double time rate."

**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.

These combined claims involve the Carrier's assignment of a Crane Operator and Foreman to perform Trackman duties of snow and ice removal, changing rail and surfacing during the claim periods while the Claimants were furloughed.

The Organization argues that the Carrier created two new Trackman positions, but did not fill them with furloughed employees in line with Articles 27(a) and 32(a) and (b). It asserts that the assigned employees provided statements that they performed primarily Trackman work on the claim dates, and that the Incidental Work Rule is inapplicable where the work in issue is a majority of the work performed. The Organization contends that Article 44 is a pay Rule and does not operate to abrogate seniority rights.

The Carrier initially contends that the claim is vague and incomplete, and must be procedurally dismissed on this basis. On the merits, the Carrier argues that, although other employees covered by the Agreement may have been involved in this type of work during the claim period, Article 48 permits employees to perform service in two or more classes of work under the Agreement. It notes that both employees

assigned were senior to the Claimants in the Trackmen classification, and that the work was covered by the Incidental Work Rule. The Carrier contends that Article 44, Composite Service, does not exclusively reserve this type of work to Trackmen, and permits temporary assignments to lower-rated positions under the Agreement so long as the employee so assigned receives the higher pay for work performed. It concludes that the Organization failed to meet its burden of proving that a violation of the Agreement took place.

Despite the learned arguments presented by both sides to this dispute on the property, a careful review of the record convinces the Board that the Organization failed to sustain its burden of proving that the contested assignments violated the Agreement, or that the Carrier was obligated to recall the Claimants from furlough for these incidents of work rather than assigning others covered by the terms of the Agreement to perform them in conjunction with their regular assignments. Accordingly, the claim will be denied.

**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 December, 2000.