

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 35734  
Docket No. MW-33014  
01-3-96-3-400**

**The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.**

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

**STATEMENT OF CLAIM:**

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

- (1) The Agreement was violated when the Carrier abolished the track foreman positions on Gang Nos. 3856 and 3872 on January 16, 1995 and thereafter assigned machine operators to perform the foremen's duties (Carrier's File 950298 MPR).**
- (2) The Agreement was violated when the Carrier abolished the track foreman positions referred to in Part (1) above and thereafter assigned Machine Operators M. Oldham and J. Miesenheimer to perform the foremen's duties beginning on January 16, 1995 and then failed and refused to pay them at the foreman's rate for such service (Carrier's File 950285).**
- (3) As a consequence of the violation referred to in Part (1) above, Messrs. W. Brendle and K. Harmon shall each be compensated for ‘\*\*\* the difference in pay between foreman and Trackman beginning on February 13, 1995 for Mr. Brendle, and February 14, 1995 for Mr. Harmon. \*\*\* This claim is to continue until there (sic) jobs are restored.’**
- (4) As a consequence of the violation referred to in Part (2) above, Messrs. M. Oldham and J. Miesenheimer shall each be compensated at the ‘ . . . Foremans wages starting on January 16,**

1995 and continuing until Foremans jobs have been restored to these gangs.””

**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 W. Brendle and K. Harmon hold seniority as Foremen in the Track Subdepartment and, prior to January 16, 1995, they were assigned as Foreman, respectively, of Gang Numbers 3856 and 3872. At all times pertinent to this case, Claimants M. Oldham and J. Miesenheimer held seniority as Machine Operators and were so assigned, respectively, on Gang Numbers 3856 and 3872. Effective January 16, 1995, the Foreman positions held by Claimants Brendle and Harmon were abolished and they each exercised applicable seniority to place onto a lower rated Trackman's position (Claimant Brendle on February 13, 1995) and (Claimant Harmon on February 14, 1995).

These claims filed by the Organization on behalf of Messrs. Brendle and Harmon on March 7, 1995 and Messrs. Oldham and Miesenheimer on June 2, 1995, allege that the Machine Operators have functioned as de facto Foreman of their respective gangs and performed the Foreman duties previously performed by Claimants Brendle and Harmon subsequent to the abolishment of those Foreman positions on January 16, 1995. On that basis, the Organization seeks compensatory damages equal to the difference between the Foreman's rate and the respective rates of pay at which the Claimants were actually compensated until such time as the abolished Foreman positions are reestablished by the Carrier.

Our review of the record evidence leaves us unpersuaded that the Organization carried its burden of demonstrating a violation of the provisions of the governing Agreement(s) or any related binding past practice. To the contrary, the evidence indicates that it is not at all uncommon for Machine Operators to work without the presence of a Foreman. Moreover, in this particular case, the Carrier's invocation of the "incidental tasks" provisions of Article XI of the Imposed Agreement of February 6, 1992 went unanswered by the Organization.

**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 24th day of October, 2001.**