

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35840
Docket No. MW-33775
01-3-97-3-248**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: (
(Brotherhood of Maintenance of Way Employees
(Indiana Harbor Belt Railroad Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- 1. The Carrier violated the Agreement when it assigned Assistant Supervisor A. R. Delatorre to inspect track and make track repairs at Gibson Relay Yard, Kensington Yard, Cast Armour Yard and the lake front on February 6, 7, 8, and 9, 1996, instead of assigning Foreman A. Bowen to perform the scope covered work (Carrier's File MW-96-012).**
- 2. As a consequence of the aforesaid violation, Foreman A. Bowen shall be allowed thirty-two (32) hours' pay at his straight 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.

The Organization asserts that West District Assistant Supervisor A. R. Delatorre inspected and made out yard reports for the Gibson Relay Yard, Kensington Yard, Cast Armour Yard and the Lake Front on February 6 - 9, 1996 in violation of the Scope Rule (covering "employees . . . engaged in work generally recognized as Maintenance of Way work, such as inspection . . . of . . . tracks. . .")

The record reveals that Supervisors have performed the disputed inspection work for some time. In that regard, the Carrier asserts that " . . . Assistant Supervisors have always performed inspections on the IHB . . . a precedent in excess of 20 years." And, even according to covered employees, " . . . the last few years we have witnessed IHB attempting to shift some of the inspections to Supervisors particularly the yard tracks FRA report" and "[f]or years we have raised the issue to the I.H.B. Management but they refuse to acknowledge our complaints. . . ."

The Scope Rule is general. The evidence shows that Supervisors have performed the disputed work in the past on a regular basis. Indeed, even according to the covered employees, Supervisors have performed this work "for years." Therefore, the Board cannot find that the Organization has established by probative evidence that employees covered by the Agreement have in the past performed the disputed work to the exclusion of others. See Third Division Award 21479.

This claim shall therefore 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 18th day of December, 2001.