

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 36288  
Docket No. MW-35608  
02-3-99-3-530**

**The Third Division consisted of the regular members and in addition Referee Richard Mittenthal 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 directed and utilized Trackman J. Ellis in the capacity of a foreman beginning March 4, 1998 through April 9, 1998 and then failed and refused to properly compensate him for such service (System File MW-98-138/1140966 MPR).**
- (2) As a consequence of the violation referred to in Part (1) above, Mr. J. Ellis should now be compensated ‘ . . . for the difference in pay between Trackman and Maintenance of Way Track Foreman for two hundred Sixteen (216) hours at his respective straight time rate of pay. . . .’”**

**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.

Ellis was part of a small group of employees, four Trackmen and two Truck Operators, who were removing and replacing crossbucks at grade crossings during the period in question. He was one of the Trackmen. The group removed metal poles, created crossbucks, attached stop signs, installed reflector strips, and so on. It was part of a gang which had a Foreman and two Assistant Foremen although these supervisors may not have been in the area where Ellis' group was working. Ellis was designated as the Employee in Charge (EIC). He contends that because he "briefed" others in his group, "directed" their work, and was responsible for "safety" and reporting the "payroll," he was in effect serving as a Foreman and should have received the Foreman's rate of pay.

The record shows that the EIC designation is given to employees who are expected to assure employee safety, who are expected to make certain safety requirements are being observed. Such safety responsibility is not the exclusive province of Foremen. The record also shows that Timekeepers and others report on the hours worked by employees. The fact that Ellis was asked to make such a report for his group's hours for payroll purposes does not make him a Foreman.

Ellis did "brief" the group on the work at hand. Although the evidence is far from clear on this point, it appears he worked alongside the other Trackmen. He alleges he "directed" the other people in his group, but he seems to have been functioning as something akin to a "lead man." There is nothing in the record from the other employees, nor indeed from Ellis himself, as to the nature and scope of the work instructions he may have issued. One Foreman and two Assistant Foremen were available to the group if any difficulties arose. True, employees should be paid the appropriate rate for the work they are performing. That is plainly suggested by Rule 28. But given the circumstances before the Board, it cannot be said that Ellis was serving as a Foreman during the period in question. His claim lacks merit.

### AWARD

Claim denied.

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**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 28th day of October 2002.**