

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 36949  
Docket No. MS-36587  
04-3-00-3-771**

**The Third Division consisted of the regular members and in addition Referee Robert Perkovich when award was rendered.**

**(Darrell Swoboda  
PARTIES TO DISPUTE: (  
(Union Pacific Railroad Company**

**STATEMENT OF CLAIM:**

**“This is to serve notice, as required by the rules of the National Railroad Adjustment Board, of my intention to file an ex parte submission before January 22, 2000 covering an unadjusted dispute between the Union Pacific Railroad and Darrell Swoboda involving the question:**

**Is the Union Pacific using a tactic of alleging that Darrell Swoboda does not have a recognized representative for the interpretation/enforcement of the agreement to violate the agreement? Rule 10, Promotions and The November 7, 1997 and November 17, 1977 Letters of Agreement, that transferred various inspector positions to the American Railway & Airway Supervisors Association are agreements between the Union Pacific and BMW, S.P. Atlantic Federation. Claim File MW-00-32 / 1213043 has been handled to no avail on the property by Mr. Roger Sanchez (BMW General Chairman) and Mr. Gary Campbell (ARASA General Chairman).**

**The record will clearly show that the Union Pacific has violated and continues to violate our agreement. The record is clear that the carrier is using me to perform track inspector duties but compensating me as a Track Foreman. The Union Pacific responds to claims saying I am neither an ARASA nor BMW member thus throwing these good claims into limbo account no representative**

according to the agreement. I am let in limbo between the ARASA and the BMW. I will represent myself. An oral hearing is desired.

I hereby request the difference in the rate of pay according to Rule 28 of the Agreement between the Missouri Pacific Railroad Company and BMW between an ARASA Track Inspector and Track Foreman on a continuous basis since September 13, 1999 until this matter is settled in addition to any other and all compensation I have received."

**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 record reveals that in November 1997 the Carrier and the Brotherhood of Maintenance of Way Employees agreed to transfer the position of Track Inspector, as well as others, from the bargaining unit represented by the BMW to a bargaining represented by the American Railway & Airway Supervisors Association (ARASA). The agreement was struck as part of the transfer and merging of Collective Bargaining Agreements on five other properties with the Carrier. At the time of the agreement, the Claimant was employed by the Carrier as a Manager of Track Maintenance. Approximately one year later, he exercised his seniority rights to return to the BMW bargaining unit as a Track Foreman. Almost one year later, the Claimant made a claim for the difference in pay between the BMW wage for Track Foreman and the ARASA wage for Track Inspectors,

apparently claiming that he was performing the work of the latter position and thus should be compensated accordingly.

The claim must fail for two reasons. First, he is not entitled to the rate of pay for an ARASA position as a member of the BMWWE bargaining unit. His rights and obligations are governed by the BMWWE Agreement. Second, there is no provision of the BMWWE Agreement that warrants a rate of pay for Track Foreman other than the rate he has received. Essentially, the Claimant seeks to enforce terms of the ARASA Agreement on a BMWWE-represented position. This result is without precedent and one that we cannot countenance.

**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 22nd day of March 2004.**