

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 37281  
Docket No. MW-38039  
04-3-03-3-493

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.

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

**STATEMENT OF CLAIM:**

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it failed to call and assign Bridge Tender F. D. Smith to relieve Bridge Tender R. G. Rush for overtime bridge tender service on the bridge at Alexandria, Louisiana on August 29, 30, 31 and September 1, 2002 and instead called and assigned junior employee O. D. Crose (System File MW-02-120/1339807 MPR).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant F. D. Smith shall now be compensated for twenty-four (24) hours' pay at his respective time and one-half 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.

Our review of the record does not establish that the Claimant was qualified or available to perform the work in question. Thus the requisite burden of proof to support the claim has not been met.

**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 5th day of November 2004.