

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 37432  
Docket No. MW-36349  
05-3-00-3-536**

The Third Division consisted of the regular members and in addition Referee Ann S. Kenis 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 Agreement was violated when the Carrier assigned Foreman C. W. Swain to perform machine operator work (operate Tamper ATS 9203) on Gang 8901 in the vicinity of Strington, Oklahoma and Kiowa, Oklahoma between Mile Posts 603 and 583 on April 15, 16, 19, 20, 21, 22 and 23, 1999 instead of Machine Operator T. Williams (System File Y99-071/1197703 MPR).
- (2) As a consequence of the violation referred to in Part (1) above, Machine Operator T. Williams shall now be compensated for fifty-six (56) hours' pay 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.

At issue in this case is whether the Carrier violated the Agreement when it assigned a Track Foreman to operate a tamper while the assigned Operator was on bereavement leave and vacation in April 1999.

The instant claim asserts that a Relief Operator should have been called in to work while the incumbent Machine Operator was off. The Organization maintains that a Foreman, who holds no Machine Operator seniority, should not have been permitted to run the tamper during the time period in question. Relying on Rules 1, 2, 3, 4 and 14, the Organization contends that the Claimant should be compensated for lost pay as a result of the Agreement violation.

The Carrier argues that there is no Agreement requirement for a Relief Operator to be called in this instance. The Carrier asserts that the Organization has not identified any provision in the Agreement that would grant the Claimant a demand right to occupy the temporary vacancy, especially when he was already working on a different gang.

The Organization, as the moving party, had the burden to substantiate all elements of its claim. Based on our review of the record, that burden has not been met. The claim lacks evidentiary support and the asserted violations of the Agreement were not developed on the property. Although the Organization contended that various Rules were implicated in this case, it failed to demonstrate how those Rules were violated.

It must be noted that the Organization's handling on the property differed markedly from the handling before the Board. We are confined, however, to the record developed during the on-property handling and on that basis must find that the Organization did not establish that the Claimant had a contractual right to fill the temporary vacancy or that the Carrier violated the Agreement in its temporary assignment of Foreman Swain to the Tamper Operator job.

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**Based on the foregoing factors, the instant claim is 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 22nd day of March, 2005.**