

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37717
Docket No. MW-36585
06-3-01-3-59

The Third Division consisted of the regular members and in addition Referee Steven M. Bierig when award was rendered.

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

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it assigned Assistant Foreman S. P. Babcock to perform foreman duties on System Gang 9004 and failed and refused to compensate him for such service at the applicable foreman's rate of pay (System File UPSGRM-9115T/1219329).
- (2) As a consequence of the violation referred to in Part (1) above, Assistant Foreman S. P. Babcock shall now be compensated for the differential in pay for all straight time and overtime hours worked beginning October 3 through December 6, 1999 at the applicable foreman's 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.

The Claimant entered service on May 20, 1992. As of September 23, 1999, he established and held seniority as an Assistant Track Foreman. Beginning September 22, 1999, the Claimant was assigned to fill the Assistant Extra Gang Foreman's position on System Gang 9004, which is a track surfacing gang that follows System Gang 9001. The Claimant contends that beginning September 22 and continuing through December 6, 1999, although assigned as an Assistant Foreman, he was acting in the capacity of a Foreman and should be compensated as such.

The Organization submitted a claim contending that the Carrier violated the Agreement when it did not compensate the Claimant for the difference between the rate of the Assistant Foreman's position and that of the Foreman's position.

Conversely, the Carrier argues that the Organization cannot meet its burden of proof in this matter. It contends that the claim is defective, both procedurally and substantively. First, the Carrier asserts that the claim was not presented in a timely fashion in accordance with Rule 49(a) of the Agreement. Second, the Carrier contends that the dispute presented to the Board is not the same dispute that was presented on the property. Finally, the Carrier contends that the Claimant was not performing Foreman's work on the surfacing gang because Foremen and Assistant Foremen perform the same type of work on a surfacing gang. The Organization has been unable to refute this contention. Therefore, the claim must be denied.

The Board finds that the Organization did not meet its burden of proof. The Board determines that the Organization did not prove that the Claimant was performing the functions of a Foreman during the relevant time period, nor did it effectively rebut the Carrier's contention that there is no Foreman assigned to the surface gang. See Third Division Award 35734. Therefore, after a review of all the evidence, there was no showing that the Carrier erred when it compensated the Claimant at the rate for the position of Assistant Foreman on Surface Gang 9004.

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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 23rd day of February 2006.