

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 38249
Docket No. MW-37614
07-3-02-3-745

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(BNSF Railway Company (former Atchison, Topeka
(and Santa Fe Railway Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it failed and refused to assign Mr. L. R. Bush to Track Inspector Position #802055 headquartered at Lafayette, Louisiana beginning December 3, 2001 and continuing [System File JFSF-01-16/15-02-0001 (MW) ATS].
- (2) As a consequence of the violation referred to in Part (1) above, Claimant L. R. Bush shall now be assigned to Track Supervisor/Inspector Position #82055 and he shall be compensated for the difference in pay between the track foreman rate of pay and the track inspector rate of pay for eight (8) hours each day and for all overtime hours worked by the employe on the aforesaid position beginning December 3, 2001 and continuing.”

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

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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.

This case is essentially a duplicate of the case the Board considered in Third Division Award 38201. The Claimant is the same as is the circumstance protested. For reasons explained at length in our prior Award on this matter, the instant claim is also 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 18th day of July 2007.